

22-  
482-15

*... One nation under God, indivisible,*

# WITH LIBERTY AND JUSTICE FOR ALL



*An abridgment of*  
The Report  
of the  
UNITED STATES  
COMMISSION ON CIVIL RIGHTS  
1959

MEMBERS OF THE COMMISSION

JOHN A. HANNAH, *Chairman*

DOYLE E. CARLTON

ROBERT G. STOREY, *Vice Chairman*

REV. THEODORE M. HESBURGH, C.S.C.

JOHN S. BATTLE

GEORGE M. JOHNSON\*

STAFF DIRECTOR, GORDON M. TIFFANY

---

\*Succeeding J. Ernest Wilkins (*Deceased*).

## PART TWO VOTING

### CHAPTER I. THE AMERICAN RIGHT TO VOTE: A HISTORY

The right to vote is the cornerstone of the Republic, and the key to all other civil rights. Upon this American fundamental, in the course of enacting the Civil Rights Act of 1957, there was agreement between Democrat and Republican, North and South, Executive and Legislative branches.

Said Attorney General Herbert Brownell, Jr.:

... The right to vote is really the cornerstone of our representative form of government. I would say that it is the one right, perhaps more than any other, upon which all other constitutional rights depend for their effective protection, and accordingly it must be zealously safeguarded.

Said Senate Majority Leader Lyndon Johnson, Democrat of Texas:

I voted for the civil rights bill because I believe that the right to vote is the most important instrument for securing justice. I was convinced that steps were needed to safeguard that right.

Said Senator Leverett Saltonstall, Republican of Massachusetts:

No one can deny that the right to vote is a fundamental, inalienable right of all people in a democracy. Every other constitutional right depends upon it. Without this, we have only an illusion of true democracy; history has shown us that when this basic right is abrogated, democracy and freedom fail.

Said Senator Paul Douglas, Democrat of Illinois:

... If we can help to restore and maintain this right to vote, many of the other present discriminations practiced against Negroes, Indians, and Mexican-Americans will be self-correcting.

The history of democracy in the United States is essentially the story of a great ideal of the dignity and rights of every human being, a cautious constitutional beginning of self-government, and then a long, still unfinished growth toward realization of the ideal. No feature of that growth has been more significant than the evolution which has occurred in the American concept of voting. The new nation began with a prevailing attitude that the right to vote should be limited to the few who prove themselves *qualified*, usually by ownership of property. Gradually the nation shifted to the modern concept that voting is a right which belongs to every citizen except the few who are specifically *disqualified* by the qualification requirements of their States.

#### THE CAUTIOUS BEGINNING

The winning of the American Revolution, it is often supposed, made Americans free and self-governing overnight. But of the estimated 3,250,000 people (not counting Indians) in the country at war's end, more than a million were still not free. According to William Miller

in *A New History of the United States*, they included 600,000 Negro slaves, 300,000 indentured servants, 50,000 convicts dumped by the mother country, and assorted debtors and vagrants sold into involuntary labor. And of the approximately 2,000,000 Americans who were free, perhaps no more than 120,000 could meet the voting qualifications of their States.

The delegates who met at Philadelphia in 1787 to write the U.S. Constitution were in general agreed on the great principle of the Declaration of Independence, that governments derive their just powers from the consent of the governed, and hence that sovereign power resides in the people as a whole. But they were far from agreed as to just *which* people should be allowed to exercise that power through the election of representatives.

Some of the delegates feared, some favored, a strong central government. Some saw self-government as an essential means toward the development of individual character, and hence believed that most citizens should at once assume the responsibilities of voting. Others, more concerned with the stability of the new government, feared "mob rule" and thought that extension of the franchise should await mass education. Hence it was left to each State to determine which of its citizens could vote.

All of the delegates at Philadelphia were products of a colonial background in which, according to one estimate, "not more than 10 to 15 percent of the . . . population could qualify for the franchise." Over the years, their colonies had devised numerous restrictive voting qualifications. At various times and in various colonies, any or all of the following considerations might determine whether a person could have a voice in his government:

Sex	Amount of property held
Age	Religion
Residence	Status of freedom
Morality or character	Race

This, then, was the concept of the voting privilege with which the draftsmen of the Constitution were familiar as they began to erect the structure of the American Republic. In the first election under the new Constitution, only about 1 American in 30 voted.

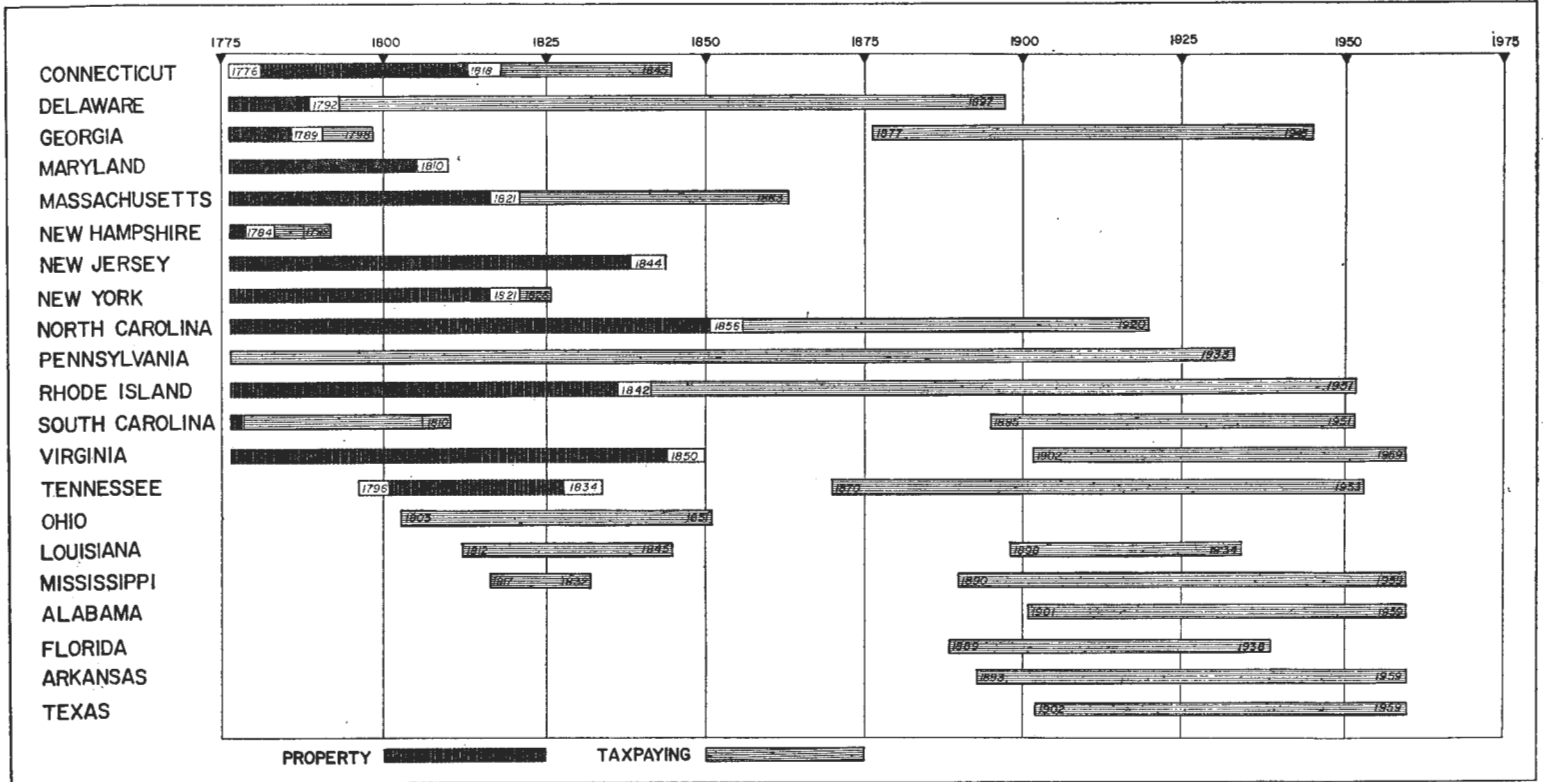
#### THE WIDENING FRANCHISE

Since 1789, the catalog of voting requirements in the United States has been undergoing continuous revision. Many of the old restrictions have been removed. Some, with long genealogies, still exist. And some new ones have been added.

Between the end of the Revolution and 1800, eight States revised their constitutions and three new States came into the Union. In the 1780's Georgia and New Hampshire abandoned their property qualifications in favor of simple taxpaying requirements. New constitu-

CHART I. Duration of Property and Taxpaying Qualifications for Voting

\*\*\*\*\* DURATION OF PROPERTY AND TAXPAYING QUALIFICATIONS \*\*\*\*\*



Note that later restoration of taxpaying qualifications occurred, without exception, only in the former slave-holding States.

tions were adopted soon after in Pennsylvania and South Carolina, but without change in property or taxpaying qualifications. Vermont was admitted to the Union in 1791 with a ready-made constitution containing voting qualifications that caused it to be described as "the most liberal of all the country." Kentucky joined the Union in 1792 with a constitution almost as liberal: all free males who had lived in the State 2 years and in the county 1 year were allowed to vote.

Delaware moved from a property requirement to mere payment of a State or county tax, and New Hampshire abandoned even its taxpaying requirement. Tennessee was the last State to enter the Union with a real-property requirement, in 1796.

The rise of vote-hungry political parties, the growth of popular interest in political battles, economic clashes between seaboard businessmen and inland farmers, reform movements, demand for "internal improvements" in the opening West—all these and other developments helped make more and more Americans want and get the right to vote. State by State the struggle for wider suffrage went on, and the next quarter century saw the admission of nine more States, none of which set up a property qualification. Three—Ohio, Louisiana and Mississippi—did adopt a taxpaying qualification. But after 1817 no new State admitted to the Union demanded that its voters have either form of "material interest" in the community.

#### NEW BARRIERS

As property and taxpaying requirements were being lowered and eliminated, various groups of "undesirables," hitherto denied the ballot by these tests, became otherwise eligible to vote. Most States, however, continued to forestall them by specific exclusions. In Ohio in 1803, persons with mental impairment and those convicted of certain crimes were denied suffrage; and soldiers, sailors, and marines were disfranchised by residence requirements. Louisiana in 1812 limited suffrage to United States citizens. Maine in 1819 excluded paupers and persons under guardianship, and in 1818 Connecticut adopted a new constitution reviving an old requirement that voters must be of good moral character.

Thirty-six years later, in 1855, an amendment to the Connecticut constitution, obviously aimed at the mounting flood of immigrants, required that prospective voters be able to read the constitution or statutes. In 1857, the Massachusetts constitution was amended to provide that all voters must be able both to read the constitution and to write their names. Exception was made for men over 60 and anyone who had already voted.

Exclusion from the polls on specifically racial grounds did not become general until there began to be appreciable numbers of Negroes who had gained their freedom. The Revolutionary constitutions of only two of the original States—Georgia and South Carolina—con-

tained explicit provisions limiting suffrage to "white males." During the last few years of the eighteenth century and the early years of the nineteenth, however, the situation changed rapidly. Between the years 1792 and 1838 Delaware, Kentucky, Maryland, Connecticut, New Jersey, Virginia, Tennessee, North Carolina, and Pennsylvania altered their constitutions to exclude Negroes. Furthermore, Negroes were denied the ballot by the constitution of every State except Maine that came into the Union from 1800 to the eve of the Civil War. Only in New England and New York, where they were few, was there no exclusion of Negroes on racial grounds; and in New York the Negro's right to vote was limited by a property-owning and taxpaying qualification not applicable to whites.

#### WAR BREAKS THE PATTERN

Until 1861 the extension of the franchise thus followed a course of gradual evolution; civil war shattered the pattern. By Presidential proclamation, act of Congress, and finally by constitutional amendment, some 4 million Negro slaves were suddenly set free, made citizens, and given the citizen's voting right.

For former Confederates, the cup of bitterness overflowed. In the wake of defeat and this revolution in their social order (which also involved an uncompensated loss of some \$4 billion worth of slave property) came the "enemy occupation" and military rule of Reconstruction.

President Andrew Johnson sought to reorganize the former Confederate states in the conciliatory manner planned by Abraham Lincoln. But Johnson's mild measures were resisted in both North and South.

In the North, leaders of the Republican Party's "Radical" wing—notably Senator Charles Sumner, Representative Thaddeus Stevens, and Chief Justice Salmon P. Chase—were committed to Negro enfranchisement.

In the South, defeated but unyielding whites were determined to preserve as much as possible of their way of life.

In 1865-66 10 of the 11 former Confederate States completed their governmental reorganization. Not 1 of the 10 extended suffrage to Negroes. Instead, several of them enacted "Black Codes" again subjecting Negroes to humiliating discrimination. As summarized by J. D. Hicks in *The American Nation*, the codes provided among other things that—

"Persons of color" . . . might not carry arms unless licensed to do so; they might not testify in court except involving their own race; they must make annual written contracts for their labor, and if they ran away from their "masters" they must forfeit a year's wage; they must be apprenticed, if minors, to some white person, who might discipline them by means of such corporal punishment as a father might inflict upon a child; they might, if con-

victed of vagrancy, be assessed heavy fines, which, if unpaid, could be collected by selling the service of the vagrant for a period long enough to satisfy the claim.

To the Radical Republicans, these actions were proof enough that the South could not be treated with President Johnson's brand of benevolence. It was their view, not Johnson's, which finally prevailed.

Although President Johnson issued a proclamation declaring the Rebellion at an end on April 2, 1866, the Radical-dominated Congress still refused to recognize the credentials of southern representatives. On April 9, it passed the first Civil Rights Act, which anticipated the Fourteenth Amendment in declaring all persons born in the United States, excluding Indians not taxed, to be citizens of the United States.

On June 13, 1866, Congress proposed the Fourteenth Amendment:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(The second section provided for reduction of representation in Congress in event of the abridgement of the right to vote in Federal elections, and the fifth authorizes enforcement legislation.)

Tennessee promptly ratified the amendment and was readmitted to the Union on July 24, 1866. The other 10 Southern States refused to ratify.

#### RECONSTRUCTION

In March 1867, Congress struck back with an Act designed to "provide for a more efficient government of the Rebel States." Overturning the governments set up under the Johnson administration plan, the Act divided the South into five military divisions and required of each State as the price of representation in Congress (1) that Negroes be allowed to vote for delegates to new State constitutional conventions; (2) that the new constitutions provide permanently for Negro voting, and (3) that the Fourteenth Amendment be ratified.

Reconstruction, conducted under military rule, was now begun. In the South, Negroes and Radical Republicans were soon in command of the ballot box; Radical governors were in command of Negro militia; and carpetbaggers were in command of State treasuries.

The Southern white man's first answer was the Ku Klux Klan. Although always ready with the whip and the bucket of tar and feathers, the Klan was most active at election time. In some desperation, Congress passed enforcement acts that included a prohibition against wearing masks on a public highway for the purpose of preventing citizens from voting. The Klan movement declined, less as a



result of the new laws than of the withdrawal of moderate men of influence who could not stomach its bloody violence.

Meanwhile, the Fourteenth Amendment was ratified on July 28, 1868. The Fifteenth Amendment, ratified on February 3, 1870, declared: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Having adopted constitutions in accord with this provision, the former Confederate States undergoing reconstruction were all readmitted to the Union by 1870.

In 1877, after the compromise of the Hayes-Tilden Presidential contest, Reconstruction ended with the withdrawal of Federal troops, and control of the South was returned to its own white leaders.

#### RECONCILIATION

The South's new leadership was moderate and conservative. Its aim was not reform but rebuilding. Eager to industrialize, it was hungry for northern capital.

Northerners in turn, weary of the "bloody shirt," were eager for conciliation. Amid the booming business expansion of the period, financiers and industrialists were gratified by the soundness of leading Southern opinion. *Harper's Weekly*, for decades violently anti-Southern, now observed that southern Democracy "is wonderfully like the best northern Republicanism."

The New York *Tribune*, once a major voice of Abolition, said that the Negroes had been given "ample opportunity to develop their own latent capacities," but instead had proved that "as a race they are idle, ignorant, and vicious." It was a sentiment shared by much of the northern press.

The courts, too, seemed generally agreed that the battle flags should be stored away. In decision after decision, they took pains to give the most limited interpretation possible to the Fourteenth and Fifteenth Amendments. In 1883, the Supreme Court declared parts of the existing Civil Rights Act unconstitutional.

For some 15 years the legal sanctions that had given the vote to the southern Negro remained on the books, but on election day, the Negro generally remained at home. K. H. Porter in *A History of Suffrage in the United States* has succinctly cataloged the practices employed to keep Negroes from the polls:

The activities of the Ku-Klux have been immortalized in book and play. Less dramatic were the practices of brute violence and intimidation, clever manipulation of ballots and ballot boxes, false counting of votes, repeating, the use of "tissue" ballots, illegal arrests the day before election, and the sudden removing of the polls.

These methods were eminently successful. It is true that some Negroes did vote, and in rare instances, some even held office. But

their vote was in general closely controlled, used only when a white faction needed it to assure victory. The period was marked by violence, and by frequent charges of corruption and fraud.

Fraud, accomplished in part with controlled Negro votes, prompted moves toward systematic disfranchisement of Negroes. But probably the greatest motivating force was the threat posed to the solidarity and dominance of the Democratic Party by the Southern Farmers Alliance. This agrarian protest movement, which sprang up to challenge the business-minded conservatives during the farm depression of the 1870's and 1880's, was everywhere identified with and in many places merged with the Populist Party.

Beginning with the campaigns of 1888, both the conservatives and the Populist-Alliance used Negro voters in great numbers. In *The Negro and Southern Politics*, Hugh D. Price observed:

In the bitter disputes of the 1890's, sometimes fought out within the Democratic party (as by Ben Tillman in South Carolina), sometimes involving a third party challenge (as by Tom Watson in Georgia), sometimes involving fusion movements (as by Republicans, Negroes, and Populists in North Carolina), the Negro played a key role. Either as a voter or an issue the Negro was a major factor in the politics of the period.

In North Carolina, where the future of the Democratic party was threatened by a fusion of Republicans and Populists, over 1,000 Negroes held office at one time in the mid-1890's.

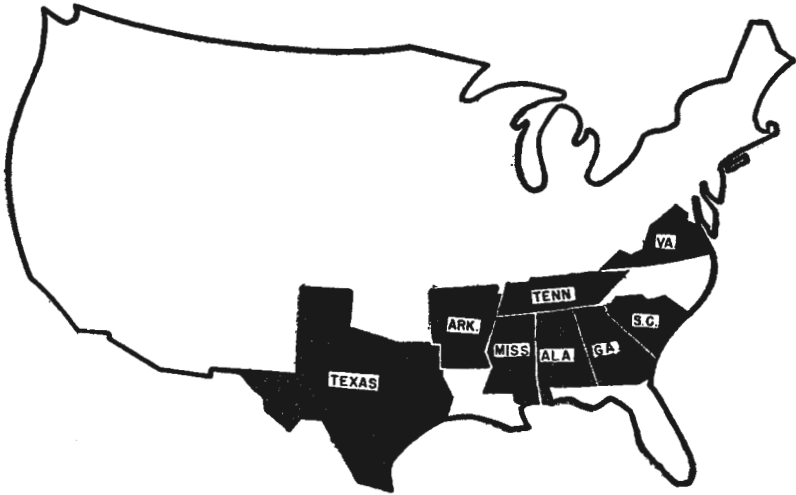
#### THE SOUTH UNITES

The Negro, it appeared, might soon hold the balance of power in Southern politics. White factions, though bitterly at odds with each other, began to close ranks against him. According to C. Vann Woodward in *The Strange Career of Jim Crow*, it was not Emancipation or Reconstruction but this move to preserve white political dominance that also brought the beginnings of the mass compulsory segregation called Jim Crow.

Between 1889 and 1908, the former Confederate States passed laws or amended their constitutions to erect new barriers around the ballot box. The most popular were: (1) the poll tax; (2) the literacy test; (3) the "grandfather clause," which provided an alternative to passing a literacy test for those who had voted in 1867 (or some other year when Negroes could not vote) and to their descendants. Other measures included stricter residence requirements, new criminal disqualifications, and property qualifications as an alternative to the literacy test.

These barriers often kept poor whites from voting—and were sometimes openly so intended. But their sponsors made little or no attempt to disguise their chief objective, which was to disfranchise Negroes in flat defiance of the Fifteenth Amendment. The chairman of the suffrage subcommittee in the 1902 Virginia constitutional convention declared of the new literacy test:

CHART II.  
SUFFRAGE IN POLL TAX STATES—1944



Potential and Actual Voters in the 1944 Presidential Elections



In the 8 Poll Tax States,\* 18.31 Percent Voted



In the 40 Non-Poll Tax States, 68.74 percent voted

\*Since 1944 Georgia, South Carolina, and Tennessee have abandoned the poll tax.

Adapted from *To Secure These Rights*, p. 38.

I expect the examination with which the black man will be confronted to be inspired by the same spirit that inspires every man upon this floor and in this convention. I do not expect an impartial administration of this clause.

The president of the 1898 Louisiana constitutional convention, which adopted the first "grandfather clause," summed up as follows:

We have not drafted the exact Constitution that we should like to have drafted; otherwise we should have inscribed in it, if I know the popular sentiment of this State, universal white manhood suffrage, and the exclusion from the suffrage of every man with a trace of African blood in his veins. . . . What care I whether the test we have put be a new one or an old one? What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the Negro from voting, and isn't that what we came here for?

Some of these voting qualifications—which aroused strong southern opposition from the start because they also disfranchised many whites—have subsequently been abandoned or declared unconstitutional. The "grandfather clause" was outlawed by the Supreme Court in 1915. Only five States still maintain the poll tax. But meantime a more effective means of sifting black voters from white had appeared with the advent of the direct primary and the emergence of the South as a virtually one-party region in which the Democratic nomination is almost always equivalent to election.

#### THE "WHITE PRIMARY"

The one-party device for disfranchising Negroes was simple: require the primary voter to be a party member, then bar Negroes from membership in the Democratic Party. Thus the South's "white primary" was born.

A quarter century of repeated trips up and down the judicial ladder was necessary before the white primary was finally laid to rest in 1953. There was steady progress from 1927 for the Southern Negro who wished to vote, but it was a slow progress, marked in the case of *Grovey v. Townsend* by a notable setback. Each time the courts invalidated a device of the white primary used to exclude Negroes from participation, new ways would be found which would require further tests in the courts.

The following summary of court decisions chronicles the progress made by the Negro in his attempts to break the white primary barrier:

*Nixon v. Herndon*, 273 U.S. 536 (1927): The U.S. Supreme Court invalidated a Texas law that specifically barred Negroes from the Democratic primary.

*Nixon v. Condon*, 286 U.S. 73 (1932): The Supreme Court held that the attempt to vest the power to discriminate in the Texas Central Committee of the Democratic Party could not be sustained because the committee received its authority to act from the legislature and hence was a State agent.

*Grovey v. Townsend*, 295 U.S. 45 (1935): The Supreme Court held that Democratic State conventions could lawfully restrict party membership to whites, the party being considered a private organization.

*U.S. v. Classic*, 313 U.S. 299 (1941): The Supreme Court held that the Federal Government can regulate a State primary which is part of the machinery of electing Federal officeholders.

*Smith v. Allwright*, 321 U.S. 649 (1944) : The Supreme Court specifically overruled its decision in *Grovey v. Townsend*, holding that a primary conducted under State authority is a State election, and therefore, a political party cannot ban Negroes from voting.

*Rice v. Elmore*, 333 U.S. 875 (1948) : The Supreme Court declined to review a lower court decision which had held that, despite repeal of all traces of State control over the Democratic Party, the party and the primary were still used as instruments of the State in the electoral process.

*Baskin v. Brown*, 174 F. 2d 391 (4th Cir. 1949) : The Court of Appeals, on the strength of the principle laid down in the *Elmore* case, rejected a device by Democratic Party officials in South Carolina which vested control of primaries in clubs from which Negroes were barred.

*Terry v. Adams*, 345 U.S. 461 (1953) : The Supreme Court held that a purely private organization in Texas, which held a "preprimary" election to qualify candidates for the Democratic Party's direct primary, acted in such close association with the Democratic Party as to deny the petitioners their right to vote as guaranteed by the Fifteenth Amendment.

The decline of the white primary led Alabama to turn to revision of her registration laws. The "Boswell amendment" to the State constitution, adopted in 1946, gave members of boards of registrars broad discretion to pick and choose among would-be voters. The boards would determine whether applicants for registration were of "good character"; whether they could "read and write, understand and explain any article of the constitution of the United States," and whether they understood "the duties and obligations of good citizenship. . . ."

This device, too, was struck down by a Federal district court in 1949. The court held that the standards offered no guide to registration officials, and that there was no objective or uniform test to determine whether a person could or could not understand the Constitution. The Supreme Court refused to overrule this decision.

But as will appear in the following chapters, Southern resistance to the Fifteenth Amendment was by no means ended.

## CHAPTER II. A STATISTICAL VIEW OF NEGRO VOTING

The primary concern of Congress in passing the Civil Rights Act of 1957, and the single specific field of study and investigation that it made mandatory for this Commission, was alleged denials of the right to vote. But for nearly a year after the passage of the Act and for over 5 months after the Commissioners were confirmed by the Senate, no sworn voting complaints were submitted to the Commission making the allegations required to invoke the Commission's duty "to investigate." During this period and thereafter the Commission carried out its second statutory duty, "to study and collect information" concerning, first of all, the problem of denials of the right to vote.

The Commission began by collecting all available statistical information on voting. These statistics, though containing many serious gaps, are informative.

In no Northern or Western State are racial, religious, or national origin statistics on registration or voting issued, even where they are kept. From all accounts, including the reports of this Commission's State Advisory Committees and the compilation of State laws made for the Commission by the Legislative Reference Service of the Library of Congress, problems of discriminatory denials of the right to vote in these States are relatively minor, both statistically and as a matter of law. In several States, Indians face certain limitations, and the Constitution of Idaho provides that "Chinese, or persons of Mongolian descent, not born in the United States" shall not vote, a holdover from the era of Oriental exclusion. In New York there is the language barrier to voting by citizens of Puerto Rican origin, discussed below. And there are *de facto* denials of the right to vote in northern areas that exclude or discourage Negro residence altogether. For example, the report of the Committee on the Right to Vote of the Indiana State Advisory Committee stated that in 1946 it was found that there were no Negro residents in 30 of the State's 92 counties. The Indiana report added that—

in a number of the county seats and small communities in the counties signs are visible advising "Niggers don't let the sun go down on you here!" . . . Obviously, if one cannot establish residence in one-third of the State, he cannot meet the qualifications for voting.

The Indiana committee concluded that in these areas "the Negro in Indiana is being deprived of his right to vote by indirection."

In the South, according to the best estimates available, Negro registration has climbed from 595,000 in 1947 to over 1 million in 1952, to 1.2 million in 1956. But this represents only about 25 percent of the nearly 5 million Negroes of voting age in the region in 1950. By contrast, about 60 percent of voting-age southern whites are registered. But generalizations are misleading because the picture varies from State to State and from county to county within each State.

The following summaries of the available statistical information on voting in the respective Southern States all use the 1950 Census figures, the latest ones available, for voting-age and total population breakdowns by race. Estimates of the percentage of Negroes registered to vote are derived from these 1950 Census figures and the latest available registration figures. These registration or voter-qualification figures are released officially by the State governments in Arkansas, Florida, Georgia, Louisiana, South Carolina, and Virginia. In North Carolina, county boards of elections submitted figures to the Commission's State Advisory Committee. The secondary sources used in the other States are described in each of the following summaries. No racial registration statistics by counties were available for Tennessee.

The available statistical breakdown for each county or parish in the preceding States is printed in the appendix of the Commission's unabridged report. There it will be seen that Negroes are registered in relatively large numbers and proportions in large Southern cities such as Atlanta (Fulton County, 28,414 or 29 percent of 1950 Negro voting-age population), Miami (Dade County, 20,785 or 49 percent), and New Orleans (Orleans Parish, 31,563 or 28 percent). Also Negroes are generally registered in fairly high proportions where they constitute a low percentage of the population. Most of the counties where fewer than 5 percent of the Negroes or no Negroes at all are registered are in rural areas where Negroes constitute a large proportion of the population. Though some of the counties have no Negro residents, most are among the 158 counties in 11 Southern States where the 1950 Census found nonwhites in the majority. See Chart III on page 48.

But this only raises the question as to the cause of the racial disparity. Why are so few Negroes in some areas registered?

TABLE 1  
ARKANSAS

*Source:* 1950 census; 1958 registration figures from State Auditor: Arkansas has no "registration" as such. Payment of poll tax is equivalent of registration. The following figures are official poll tax payments.

The total 1950 voting-age population of Arkansas was 1,108,366. Of this total, 880,675 were white and 227,691 were nonwhite. Thus nonwhites were 20.5 percent of the total voting-age population.

In 1958 the total number of registered voters in Arkansas was 563,978. Of this total, 499,955 were white and 64,023 were nonwhite. Thus nonwhites were 11.4 percent of all registered voters.

The number of nonwhites registered in 1958 represented 28.1 percent of the total 1950 population of voting-age nonwhites.

Arkansas has 75 counties. In six counties, nonwhites were a majority of the 1950 voting-age population. In all of these counties some nonwhites were registered to vote in 1958.

#### Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered.....	*14
Some, but fewer than 5 percent.....	1
5 to 25 percent.....	28
25.1 to 50 percent.....	28
More than 50 percent.....	4

\*Nonwhite population of voting age in these 14 counties in 1950 was 83.



TABLE 2  
FLORIDA

*Source:* 1950 census; 1958 registration figures from Florida Secretary of State, published regularly.

The total 1950 voting-age population of Florida was 1,825,513. Of this total, 1,458,716 were white and 366,797 were nonwhite. Thus nonwhites were 20.1 percent of the total voting-age population.

In 1958 the total number of registered voters in Florida was 1,593,453. Of this total, 1,448,643 were white and 144,810 were nonwhite. Thus nonwhites were 9.1 percent of all registered voters.

The number of nonwhites registered in 1958 represented 39.5 percent of the total 1950 population of voting-age nonwhites.

Florida has 67 counties. In one county, nonwhites were a majority of the 1950 voting-age population. In this county, 13.2 percent of the 1950 voting-age nonwhites were registered to vote in 1958.

#### Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered.....	*3
Some, but fewer than 5 percent.....	3
5 to 25 percent.....	12
25.1 to 50 percent.....	30
More than 50 percent.....	19

\*Nonwhite population of voting age in these 3 counties in 1950 was 2,944

TABLE 3  
GEORGIA

Source: 1950 census; 1958 registration figures from official county reports released by Secretary of State of Georgia, published in *Atlanta Constitution*, September 29, 1958

The total 1950 voting-age population of Georgia was 2,178,242. Of this total, 1,554,784 were white and 623,458 were nonwhite. Thus nonwhites were 28.6 percent of the total voting-age population.

In 1958 the known total of registered voters in Georgia was 1,291,597. Of this total, 1,130,515 were white and 161,082 were nonwhite. Thus nonwhites were 12.5 percent of all registered voters.

The number of nonwhites registered in 1958 represented 25.8 percent of the total 1950 population of voting-age nonwhites. Georgia has 159 counties. In 29 counties, nonwhites were a majority of the 1950 voting-age population. In two of these counties, no nonwhite was registered to vote in 1958. In 11 of the other 27 counties, the number of nonwhites registered in 1958 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

#### Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered.....	*6
Some, but fewer than 5 percent.....	22
5 to 25 percent.....	53
25.1 to 50 percent.....	50
More than 50 percent.....	28

\*Nonwhite population of voting age in these 6 counties in 1950 was 3,141.

TABLE 4

## LOUISIANA

*Source:* 1950 census; 1959 Registration figures from Louisiana Secretary of State, published regularly

The total 1950 voting-age population of Louisiana was 1,587,145. Of this total, 1,105,861 were white and 481,284 were nonwhite. Thus nonwhites were 30.3 percent of the total voting-age population.

In 1959 the total number of registered voters in Louisiana was 961,192. Of this total, 828,686 were white and 132,506 were nonwhite. Thus nonwhites were 13.8 percent of all registered voters.

The number of nonwhites registered in 1959 represented 27.5 percent of the total 1950 population of voting-age nonwhites.

Louisiana has 64 parishes (i.e., counties). In 8 parishes, nonwhites were a majority of the 1950 voting-age population. In 4 of these no nonwhite was registered to vote in 1959.

## Nonwhite Registration by Parishes

Percentage of Nonwhites Registered in 1959 (based on 1950 voting-age population figures):	Number of parishes
No nonwhites registered.....	*4
Some, but fewer than 5 percent.....	9
5 to 25 percent.....	18
25.1 to 50 percent.....	14
More than 50 percent.....	19

\*Nonwhite population of voting age in these 4 counties in 1950 was 20,330.

TABLE 5

## NORTH CAROLINA

*Source:* 1950 Census; 1958 registration figures from replies of official county boards of elections in 79 of North Carolina's 100 counties to questionnaire of Commission's State Advisory Committee

The total 1950 voting-age population of North Carolina was 2,311,081. Of this total, 1,761,330 were white and 549,751 were nonwhite. Thus nonwhites were 23.8 percent of the total voting-age population.

In 1958 the total registered voters in the 79 counties reporting was 1,547,822. Of this total, 1,389,831 were white and 157,991 were nonwhite. Thus nonwhites were 10.2 percent of all registered voters in these counties.

The number of nonwhites registered in 1958 in these 79 counties represented 28.7 percent of the State's total 1950 population of voting-age nonwhites.

North Carolina has 100 counties. In the 21 counties not reporting there were 111,475 voting-age nonwhites in 1950.

In six counties, nonwhites were a majority of the 1950 voting-age population. In at least four of these, some nonwhites were registered to vote in 1958. In two, the number of nonwhites registered was fewer than 5 percent of the county's 1950 voting-age nonwhite population. Two counties did not report.

## Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered.....	0
Some, but fewer than 5 percent.....	3
5 to 25 percent.....	29
25.1 to 50 percent.....	18
More than 50 percent.....	29

TABLE 7  
VIRGINIA

*Source:* 1950 census; 1958 registration figures obtained from Virginia Secretary of State by the Commission's State Advisory Committee

The total 1950 voting-age population of Virginia was 2,036,468. Of this total, 1,606,669 were white and 429,799 were nonwhite. Thus nonwhites were 21.1 percent of the total voting-age population.

In 1958 the total number of registered voters in Virginia was 958,342. Of this total, 864,863 were white and 93,479 were nonwhite. Thus nonwhites were 9.8 percent of all registered voters.

The number of nonwhites registered in 1958 represented 21.7 percent of the total 1950 population of voting-age nonwhites.

Virginia has 100 counties.† In 8 counties, nonwhites were a majority of the 1950 voting-age population. In all of these counties some nonwhites were registered to vote in 1958.

#### Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered.....	*3
Some, but fewer than 5 percent.....	1
5 to 25 percent.....	67
25.1 to 50 percent.....	27
More than 50 percent.....	2

\*Nonwhite population of voting age in these three counties in 1950 was 910.

†There are in addition 32 "independent cities", figures on which are included in the Appendix of the full Report.

TABLE 6  
SOUTH CAROLINA

Source: 1950 census; 1958 registration figures released by Secretary of State of South Carolina as of May 10, 1958, published in *Columbia State*, May 25, 1958

The total 1950 voting-age population of South Carolina was 1,150,787. Of this total, 760,763 were white and 390,024 were nonwhite. Thus nonwhites were 33.9 percent of the total voting-age population.

In 1958 the total number of registered voters in South Carolina was 537,689. Of this total, 479,711 were white and 57,978 were nonwhite. Thus nonwhites were 10.8 percent of all registered voters.

The number of nonwhites registered in 1958 represented 14.9 percent of the total 1950 population of voting-age nonwhites.

South Carolina has 47 counties. In 15 counties, nonwhites were a majority of the 1950 voting-age population. In one of these counties, no nonwhite was registered to vote in 1958. In four of the other 14 counties, the number of nonwhites registered in 1958 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

#### Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered.....	*1
Some, but fewer than 5 percent.....	6
5 to 25 percent.....	40
25.1 to 50 percent.....	0
More than 50 percent.....	0

\*Nonwhite population of voting age in this county in 1950 was 2,625

## Unofficial Figures

TABLE 9

### MISSISSIPPI

*Source:* 1950 census; and (1) Statewide figures from 1954 survey made by then Attorney General (now Governor) James P. Coleman, Hearings House Judiciary Subcommittee, 85th Congress, 1st sess., 1957, pp. 736-739; (2) county figures from master's thesis, *Negro Voting in Mississippi*, by James Barnes, graduate student, University of Mississippi, 1955, based on interviews with officials and/or examination of county records. See also 103 *Congressional Record* 8602-03, June 10, 1957, pp. 7676-77, 85th Congress, 1st sess.; *State Times of Jackson* survey of Negro registration in 13 counties in fall of 1956, published Oct. 29-Nov. 1, 1956.

The total 1950 voting-age population of Mississippi was 1,208,063. Of this total, 710,709 were white and 497,354 were nonwhite. Thus nonwhites were 41 percent of the total voting-age population.

In 1954 the total of nonwhite registered voters in Mississippi was 22,000. White registration figures were unavailable.

The number of nonwhites registered in 1954 represented 3.89 percent of the total 1950 population of voting-age nonwhites.

Mississippi has 82 counties. In 26 counties, nonwhites were a majority of the 1950 voting-age population. In 6 of these counties, no nonwhite was registered to vote in 1955. In 18 of the other 20 counties, the number of nonwhites registered in 1955 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

#### Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1955 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered.....	*14
Some, but fewer than 5 percent.....	49
5 to 25 percent.....	17
25.1 to 50 percent.....	2
More than 50 percent.....	0

\*Nonwhite population of voting age in these 14 counties in 1950 was 51,947.

## Unofficial Figures

TABLE 8

### ALABAMA

*Source:* 1950 census; 1958 registration figures from survey by *The Birmingham News*, published February 17, 1959: "Some were official estimates, but most represent actual counts"

The total 1950 voting-age population of Alabama was 1,747,759. Of this total, 1,231,514 were white and 516,245 were nonwhite. Thus nonwhites were 29.5 percent of the total voting-age population.

In 1958 the known total of registered voters in Alabama was 902,218. Of this total, 828,946 were white and 73,272 were nonwhite. Thus nonwhites were 8.1 percent of all registered voters.

The number of nonwhites registered in 1958 represented 14.2 percent of the total 1950 population of voting-age nonwhites.

Alabama has 67 counties. In 12 counties, nonwhites were a majority of the 1950 voting-age population. In 2 of these counties, no nonwhite was registered to vote in 1958. In 7 of the other 10 counties, the number of nonwhites registered in 1958 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

#### Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered.....	*2
Some, but fewer than 5 percent.....	12
5 to 25 percent.....	34
25.1 to 50 percent.....	9
More than 50 percent.....	10

\*Nonwhite population of voting age in these two counties in 1950 was 14,730.



## Unofficial Figures

TABLE 10  
TEXAS

Source: 1950 census; registration figures from the Long News Service of Austin, which made actual counts on poll tax and exemption lists (equivalent of registration) in 165 of State's 254 counties, and for the remaining counties gave various kinds of estimates based on interviews with officials or on sampling.

The total 1950 voting-age population of Texas was 4,737,734. Of this total, 4,154,790 were white and 582,944 were nonwhite. Thus nonwhites were 12.3 percent of the total voting-age population.

In 1956-58 the known total registered voters in Texas was 1,716,336. Of this total, 1,489,841 were white (1956) and 226,495 were nonwhite (1958). Thus nonwhites were 13.5 percent of all registered voters.

The number of nonwhites registered in 1958 represented 38.8 percent of the total 1950 population of voting-age nonwhites.

Texas has 254 counties. In no counties were nonwhites a majority of the 1950 voting-age population.

### Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered.....	*14
Some, but fewer than 5 percent.....	1
5 to 25 percent.....	59
25.1 to 50 percent.....	134
More than 50 percent.....	46

\*Nonwhite population of voting age in these counties in 1950 was 42.

Apathy is part of the answer. In Atlanta, from all accounts, Negroes can register freely and 29 percent have done so, but 44 percent of the eligible whites have registered. Similarly, in Louisiana's Orleans Parish, some 28 percent of the Negroes are registered, compared with 60 percent of the whites. It may be that a lesser proportion of Negroes than of whites are registered in Northern and Western States. Gallup polls indicate that outside the South the voting turnout of Negroes is less than that of whites; according to the Gallup surveys an average of 53 percent of Negroes voted in the four national elections from 1948 to 1954, compared with a white average of 61 percent. Such apathy may stem from lack of economic, educational, or other opportunities, but it does not constitute a denial of the right to vote.

However, some of the statistics on their face do suggest something more than apathy. The figures show 16 counties where nonwhites constituted a majority of the voting-age population in 1950 but where not a single Negro was registered at last report. They show 49 other Negro-majority counties with some but fewer than 5 percent of voting-age Negroes registered. These figures indicate something more than the lower status and level of achievement of the rural Southern Negro. In the six States with officially released racial registration statistics—Arkansas, Florida, Georgia, Louisiana, South Carolina, and Virginia—nonwhites were a majority of the population in 97 counties. Of these counties, 75 had fewer than the State's average proportion of Negroes registered. Of the 31 nonwhite-majority counties in Mississippi, 27 were below the State's average of Negroes registered according to the unofficial statistics. All of the 14 nonwhite-majority counties in Alabama were reportedly below the State's average. But statistics cannot tell the crucial part of the story.

To get the authentic facts about the allegations that Negroes are being denied their right to vote, Congress wanted this Commission to conduct first-hand investigations and hearings based on sworn complaints. After August 14, 1958, when the first such complaint was received, the Commission proceeded to do just this.

### CHAPTER III. DENIALS OF THE RIGHT TO VOTE

After its five-month wait, the Commission received its first sworn voting complaint, alleging "that through threats of bodily harm and losing of jobs, and other means, Negro residents of Gadsden County are being deprived of their right to vote."

After the Commission promptly undertook a field investigation of this complaint, additional complaints began to come in from other States. Between August 1958 and August 1959 voting complaints were received from 29 counties in 8 States.

The Commission unanimously decided upon full investigation of all these complaints. The situations disclosed by these investigations, by the public hearing in Alabama described in the next chapter and by the full preparations for a hearing in Louisiana described in the chapter after that, suggest some of the reasons that complaints were slow in coming to the Commission.

The same factors that discourage or prevent Negroes from registering to vote, including in some places the fear of bodily harm and loss of jobs, work against the filing of sworn complaints by those same Negroes. A few summary facts about the counties from which complaints did come will indicate that Negroes in these areas generally lack the economic and social status to be truly independent of community pressure.

It has been asserted that the "typical county in which Negroes are disfranchised is a rural county in the old plantation belt where large landholdings and farming are the major way of life, where there is little or no industry, farm tenancy is high, years of educational achievement low, and per capita income low. The percentage of Negroes in the population is high, 50 percent or more."

For 15 of the first 25 Southern counties from which complaints were received, including 5 of those involved in the Alabama hearing, that description is accurate. Statistical data concerning these counties will be found in the appendix of the unabridged version of this report.

Complaints were received from only two counties whose percentage of nonwhite population was less than the statewide percentage. In the others, the median family income was generally lower than in the State as a whole. In all cases, income was conspicuously below the national median of \$3,073 per year. The percentage of urban concentration was below the national average of 64 percent in all but four counties.

CHART III. Distribution of Non-white Population in Counties From Which Voting Complaints Have Been Received.

ALABAMA

- ① Barbour
- ② Bullock
- ③ Dallas
- ④ Macon
- ⑥ Montgomery
- ⑧ Wilcox

FLORIDA

- ⑧ Gadsden

LOUISIANA

- ④ Bienville
- ⑩ Bosier
- ⑪ Caddo
- ⑫ Claiborne
- ⑬ De Soto
- ⑭ Iberia
- ⑮ Jackson
- ⑯ Ouachita
- ⑰ Red River
- ⑱ Webster

MISSISSIPPI

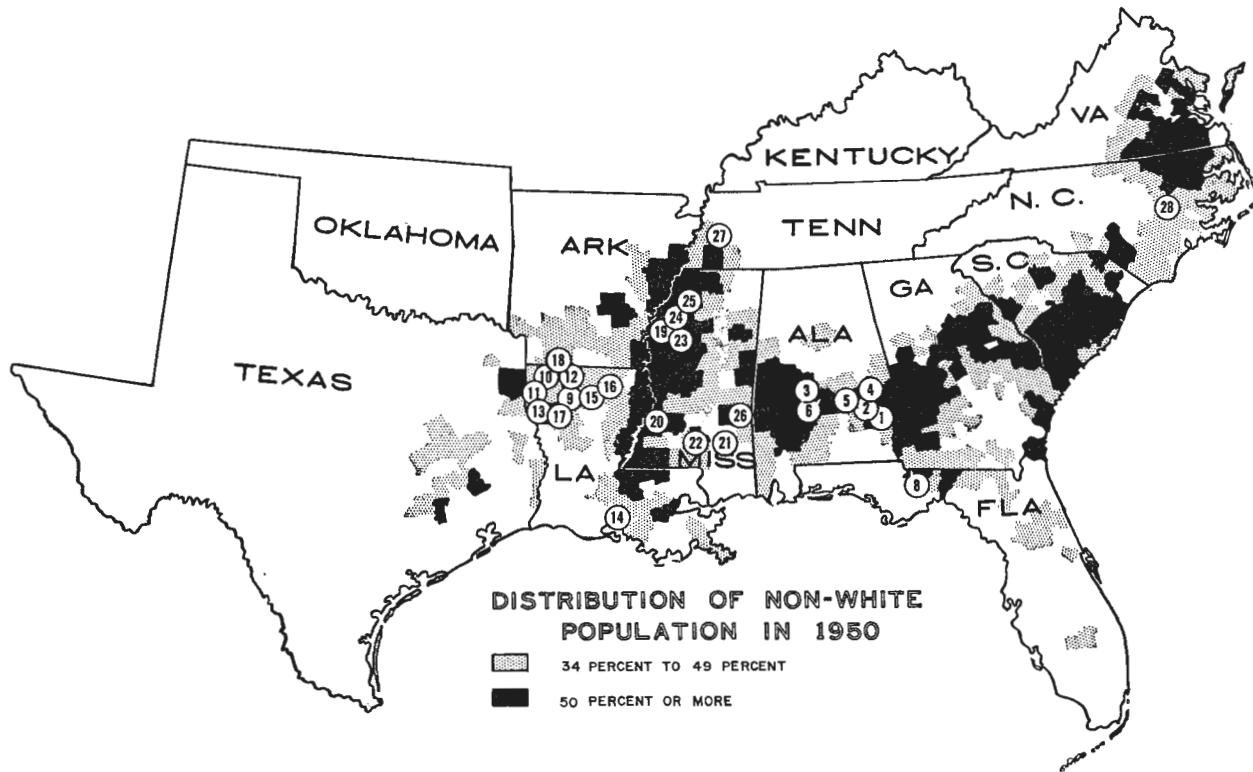
- ⑩ Bolivar
- ⑳ Claiborne
- ㉑ Forrest
- ㉒ Jefferson Davis
- ㉓ Leflore
- ㉔ Sunflower
- ㉕ Tallahatchie
- ㉖ Clarke

TENNESSEE

- ㉗ Haywood

NORTH CAROLINA

- ㉘ Greene



In all but three of the counties the number of school years completed by persons aged 25 or over was at or below the national median of 9.3. Uniformly, the complaints came from counties in which the percentage of dwellings with more than 1.01 persons per room exceeded the national average of 15.7 percent. The minimum excess over the national average was in Forrest County, Miss. (18.6 percent). The maximum differential was found in Bolivar County, Miss., where 60.6 percent of dwellings fell within this rough measure of overcrowding.

Significantly, the largest number of complaints from any single county, 44, came from Macon County, Ala., where many Negroes have achieved greater independence because of a considerably higher level of education and income. The relatively few complaints from counties where Negroes constitute a majority but where none is registered may be some measure of the lack of independence as well as the apathy of the Negroes in those areas.

A report follows on the results of the main voting investigations conducted by the Commission and the pertinent facts collected in States other than Alabama and Louisiana (which are discussed in later chapters).

#### FLORIDA

The first sworn complaint asserted that Negroes in Gadsden County, particularly Negro "ministers and teachers" had "great fear" and that some of them had been "warned against voting."

Gadsden County, in northern Florida on the Georgia border, is 1 of only 5 out of the State's 67 counties, in which, according to official 1958 State statistics, fewer than 5 percent of the voting-age Negroes were registered. In the State at large approximately 40 percent of Negroes over 21 were registered, and in 19 counties more than 50 percent of such Negroes were registered. Dade and Duval counties, where Miami and Jacksonville are located, with about 50 percent of voting-age Negroes registered, together accounted for nearly 50,000 of Florida's nearly 150,000 registered Negroes. But in three other rural counties near Gadsden—Lafayette, Liberty, and Union—no Negro was registered.

In Gadsden, according to the official figures, only 7 Negroes were registered in 1958, although 10,930 adult Negroes lived there in 1950.

Official State statistics also show that a significant increase in Negro registrants occurred in Gadsden County from 1946 when the total was 32 to the years 1948 and 1950 when it rose to 137 and 140. Then in 1952 it dropped down to 6, at which level it has remained with only slight fluctuations.

Field investigations revealed that the persons responsible for the registration drive in 1948-50 are no longer in Gadsden County. One

of the leaders, who was fired from a good job and allegedly threatened with physical violence, left the State.

On the basis of staff interviews, the following additional information can be reported.

There are about 300 Negro teachers in the county, many of whom have expressed a desire to vote, but virtually none of whom is registered. They are unwilling to attempt to register because of the fear of losing jobs or of other economic reprisals.

Affidavits and other statements from Gadsden County residents cited instances of what they believe to be economic reprisal. One Negro minister was allegedly denied a \$100 loan at a bank, despite the fact that he had a highly solvent cosigner. He had previously suggested from the pulpit that Negroes should register and vote.

A teacher was denied renewal of a teaching contract in the county schools. The alleged reason was the teacher's generously liberal attitude toward voting rights and other constitutional matters discussed in her course in social studies.

One elderly Negro who was interviewed said that he had registered about 3 years before but had decided not to vote. When asked why he did not go to the polls, he said, "I am too old to be beaten up."

A businessman refused to be interviewed because he said, "They would bomb my [business] out of existence if I even talked with you."

It is significant that fears of reprisal are so widespread—even if they be groundless. Whether the reprisals would be carried out or not, if prospective registrants *believe* they would be, the fear is a real deterrent to registration.

#### MISSISSIPPI

In 1950 the Negro population of some 990,000 comprised about 45 percent of the population of the State. According to a survey Governor James P. Coleman made when he was the State's Attorney General, some 22,000 Negroes were registered to vote in 1954, or about 4 percent of the 1950 voting-age Negroes. Governor Coleman added that only 8,000 of these paid their poll tax and were eligible to vote in 1955.

Racial disparities in voting appear to be wider in Mississippi than in any other State. According to the county-by-county survey by a University of Mississippi graduate student referred to in the preceding chapter, there were 14 Mississippi counties with a total 1950 population of about 230,000, of whom 109,000 were Negroes, where not a single Negro was registered in 1955. In six of these counties Negroes constituted a majority of the population in 1950. In exactly half of the State's 82 counties fewer than 1 percent of voting-age Negroes

were registered; in 63 counties fewer than 5 percent; in 73 counties fewer than 10 percent.

In the survey of 13 counties conducted in the fall of 1956 by the *State Times* of Jackson, Miss., a leading white newspaper, 4 counties were found to have the same number of registered Negroes as found the year before by the university investigator; in 7 the number was slightly greater, in 2 it was smaller.

In view of these statistics, of the serious allegations made about denials of the right to vote in Mississippi in congressional hearings in recent years, and of the complaints received by this Commission from eight Mississippi counties, it is particularly unfortunate that the State's racial voting figures are fragmentary and unofficial. The Commission's firsthand investigations in eight counties demonstrated the need for the full facts on voting throughout the State.

Six of the eight counties from which complaints were received had more than 50 percent Negro population in 1950. Commission investigators interviewed all complainants and numerous other Mississippi citizens. The following summaries were derived from those interviews and from submitted affidavits, along with 1950 census figures and 1955 registration estimates.

*Bolivar County* (69 percent Negro; 21,805 voting-age Negroes; 511 registered)

Negroes testified that they were given application blanks by the registrar, and that they were directed to write a section of the constitution of Mississippi. Further, they were directed to write "a reasonable interpretation" of the section which they had written. Uniformly, the applicants were refused registration because they were advised, "Your replies won't do."

*Sunflower County* (68 percent Negro; 18,949 voting-age Negroes; 114 registered)

Negro citizens stated that when they tried to register, they were turned away. Some were told to come back because registrations were being "held up" while the legislature was "considering something." This "something" was presumably a proposed uniform policy of registration of Negroes which the Mississippi Legislature considered in early 1958.

*Tallahatchie County* (64 percent Negro; 9,235 voting-age Negroes; no Negro registered)

Negro residents said that the sheriff's office refused to accept poll taxes from them. They expressed fear of reprisals, and were reluctant to testify at all.

A public school principal in Charleston, Miss., was discharged after attempting to register and became a farmer.

*Leftore County* (68 percent Negro; 17,893 voting-age Negroes; 297 registered)

One witness, an Army veteran discharged as a technical sergeant, reported that he went to the courthouse and was asked by a female clerk what he wanted. "I want to register," he said. "To register for the Army?" she asked. When he assured her he wanted to register to vote, she told him she didn't have time because the court was meeting. She did, however, have him write his name and address on a slip of paper. Less than half an hour after his return home, two white men came to his door and asked him why he had tried to register. He replied that it was his duty. They told him that he was just trying to stir up trouble and advised him not to go back. He did return a week later, and again was told by the same clerk that she was busy. Fearful of reprisals, he stopped trying.

*Claiborne County* (74 percent Negro; 4,728 voting-age Negroes; 111 registered)

Negroes in sworn affidavits stated that they had been registered voters until 1957 when their names were removed from the registration books. Their efforts to re-register had been unsuccessful.

*Jefferson Davis County* (55 percent Negro; 3,923 voting-age Negroes; 1,038 registered)

Most of the sworn complaints were filed by Negroes who had been registered voters until 1956 when their names were removed from the registration books. Their efforts to re-register had been unsuccessful.

*Forrest County* (29 percent Negro; 7,406 voting-age Negroes; 16 registered)

Forrest County, which has produced numerous voting complaints, has a relatively low Negro concentration, conspicuously high educational level, and significantly high average income level. The registrar who served for many years until his recent death was a staunch advocate of white supremacy and steadfastly refused to register Negroes.

One witness tried 16 times to register—twice a year for 8 years. Each time the registrar simply told him that he could not register. On the last occasion the witness asked if there was any reason for this refusal. The registrar replied that there was no reason.

Another witness, a minister with two degrees from Columbia University, and a former registered voter in Lauderdale County, Miss. (1952-57) and in New York City (1945-48), attempted twice to register in Forrest County. The second time the witness admitted he was a member of the National Association for the Advancement of Colored People. The clerk insisted that this was a communistic organization



and said that the witness was "probably one of them." "That means you are not going to register me," said the witness. "You are correct," replied the clerk.

Several years ago a group of 15 Negro residents of Forrest County sought an injunction against the registrar on the ground that he had "misconstrued" section 244 of the Mississippi constitution. This section provides that a voter shall "be able to read any section of the constitution of this State; *or* he shall be able to understand the same when read to him or give a reasonable interpretation thereof." [Italic added.] The registrar was charged with applying this section rigidly against Negro applicants but ignoring it as to white applicants.

A lower court dismissed the action without prejudice, but the court of appeals reversed with instruction to retain jurisdiction for a reasonable time until petitioners had exhausted their administrative remedies.

*Clarke County* (41 percent Negro; 3,849 voting-age Negroes; no Negro registered)

Virtually everyone interviewed here told how the registrar had refused to register them by saying that they should "watch the papers and see how the mess in Little Rock and the mess in Washington worked out."

#### TENNESSEE

While no county-by-county racial voting statistics were available, a 1957 study by the Southern Regional Council reported that some 90,000 or about 28 percent of the Negroes were registered in 1956. This study concluded that in only three counties in west Tennessee—Haywood, Fayette, and Hardeman—does intimidation pose a serious threat to Negro registration and that in most of the State, Negroes can register freely.

The Commission received complaints from two of the above counties, as reported below. It also investigated a complaint that Negroes were being denied the right to register and vote in Lauderdale County. The investigation revealed that the Lauderdale charge was without foundation. Local officials gave courteous cooperation and assistance to staff representatives who examined the Lauderdale County records and found that Negroes apparently register and vote as freely as whites.

*Haywood County* (61 percent Negro; 7,921 voting-age Negroes; no Negroes registered)

In early 1959 a resident of Haywood County filed an affidavit with the Commission stating that the county election commission

had refused to register him because he is a Negro. He had a master's degree and had taught school in the county.

He stated that in June 1958 he attempted to register but was told by an employee in the registration office that the proper person to see was out and the time of her return uncertain. When the affiant returned several days later he was referred to the sheriff or county clerk. When the affiant presented a registration card from Decatur County (where he had lived the year before), the county clerk told him to go back to Decatur because "we have never registered any here." The affiant understood this to mean that no Negroes were registered in Haywood County.

The chairman of the Haywood County Election Commission made an appointment with the affiant but failed to keep it. Later, when the affiant did see him, it was too late to register and vote at the next election. The affiant was unable to discover when the registration book would be open.

When a representative of the Civil Rights Commission made inquiries, he was advised not to go to the home of the affiant because it might get the man in trouble. Therefore, the representative met with the affiant and five other Negroes in Brownsville, Tenn.

It appears that Negroes have not been permitted to register and vote in Haywood County for approximately 50 years. Representatives of this Commission were told that Negroes in the county own more land and pay more taxes than white persons but that their rights are sharply limited: They must observe a strict curfew. They are not permitted to dance or to drink beer. They are not allowed near the courthouse unless on business.

Commission representatives interviewed several public officials in Haywood County. They discovered that of the three members of the county election commission, one had died, one had resigned, and the certificate of appointment of the member who was still serving had expired approximately 3 weeks previously. The registration clerk had resigned in October 1958 and had not been replaced. Consequently, there was no one legally authorized to register voters.

Some white persons interviewed said that Negroes had never registered and were satisfied with the *status quo*. A few officials denied that there would be any obstacles to Negroes registering but that the Negroes did not want to vote. Some said they were not sure what would happen if Negroes attempted to register.

On July 27, 1959, a delegation of Negroes protested to the State Election Commission that "No Negro has voted in Haywood County since Reconstruction." The chairman of the Commission said he would look into the complaint and "do something about it."

*Fayette County* (70 percent Negro; 8,990 voting-age Negroes; 58 registered)

Here, adjoining Haywood County, a few Negroes have registered. But the experience of 12 Negro war veterans who registered in Fayette in the fall of 1958 further discouraged Negroes in Haywood.

Some of these Negro veterans were interviewed by Commission representatives. They stated that they had been subject to so much intimidation that only 1 of the 12 actually voted and he doubted that his ballot was counted for he thought he had handed it to someone instead of dropping it in the box. Two others who went to the polls were said to have been frightened away when two sheriff's deputies approached them. One was told by his banker that something might happen to him if he tried to vote. One of the 12 who was in the hauling business lost all of his customers and the police threatened to arrest any of his drivers found on the highway in his trucks.

According to men interviewed, when a Negro registers the sheriff is quickly informed and he, in turn, informs the Negro's landlord and employer. Those who register are soon discharged from their positions and ordered to move from their homes. The police arrest them and impose severe fines—as much as \$65 on minor charges, it was alleged. They are unable to get credit. Their wages are garnisheed. Applications for GI loans to buy land are turned down by local lenders.

Most of these allegations have not been verified as yet. An examination of the county voting records revealed that 58 Negroes had registered; that 20 of these had registered in 1958, and 11 in 1959. Voting records found for 46 of the 58 Negro registrants showed that only 1 of them had voted in 1958, 12 in 1956, 1 in 1953, and 3 in 1952. Of the 46, 13 had never voted and 16 had registered after the 1958 election so had had no opportunity to vote.

Under Tennessee law, any registered voter who fails to vote during 4 consecutive calendar years has his registration cancelled and must reregister. If, because of fear of reprisals, most of the Negroes who had registered fail to vote, as appears to be happening, after 4 years their registration is invalid.

#### NORTH CAROLINA

No county-by-county racial voting statistics were available for North Carolina until the Commission's North Carolina Advisory Committee sent a questionnaire to the county board of elections in each of the State's 100 counties. Replies were received from 79 counties, and the figures have been summarized in the preceding

chapter. The chairman of the Advisory Committee, McNeill Smith, says that publication of these registration statistics "is going to do a great deal to encourage Negroes to register who may have assumed falsely from national publicity that they couldn't."

The problem in North Carolina appears to be largely that of varying practices in administering the state's literacy requirement. Would-be voters must be able to "read and write" any section of the Constitution to the satisfaction of the registrar, who may have the applicant copy indicated sections or may dictate any section he chooses. The Southern Regional Council study reports that under this broad discretion, in which a Negro's ability to vote depends on the individual registrar's sense of justice, "Negroes may find it almost impossible to qualify in one county and comparatively easy in the next."

The chairman of the North Carolina State Advisory Committee notes that some persons feel that the literacy test "is applied unfairly in some of the eastern counties," although the committee had no evidence of this. The State committee has since then received one voting complaint from an eastern county (Greene) making this allegation, and forwarded it for Commission processing.

#### GEORGIA

County-by-county racial registration statistics, supplied by Georgia's Secretary of State, show that, as the Commission's Georgia State Advisory Committee reported, "the range of voting conditions and the degree of minority participation in elections varies widely." According to these official statistics, some 161,082 Negroes were registered in 1958, or about 26 percent of the State's Negroes over 18, the voting age in Georgia. The State Advisory Committee reports that this is an increase from some 125,000 Negroes registered in 1947, and that the increase is largely in urban areas where Negro voting is heaviest.

In 27 of the State's 159 counties more than 50 percent of the voting-age Negroes were registered in 1958. But in Baker County, with some 1,800 Negroes of voting age, none was registered; in Lincoln County, only 3 out of more than 1,500; in Miller, 6 out of more than 1,300; in Terrell, 48 out of 5,000. In 22 counties with sizable Negro populations, fewer than 5 percent were registered.

The Commission received no sworn complaints from Georgia, but in its Atlanta housing hearing it heard testimony about the relative success, noted above, of the drive to register Negro voters in Atlanta, about the correlation between this Negro vote and better housing conditions there, and about the contrasting voting and housing situation in rural Georgia counties. It received in evidence

studies made of the degree of Negro voting in six such counties. These are printed in the Atlanta section of the published volume of the Commission's regional housing hearings.

The Commission's Georgia State Advisory Committee, while noting that "in few counties, the Negro votes with the same ease and freedom as the white citizen," stated that it "had access to reports on conditions in 15 or 20 counties where undoubtedly the Negro wishing to register or vote has met difficulties." It listed some forms of discrimination faced by would-be Negro voters:

In a few places, there is neither separation of voting boxes nor voting lines; however, in most places the white and Negro ballot boxes are readily identifiable.

\* \* \*

The 1958 session of the General Assembly passed a bill frankly designed to discourage Negro registrants. It poses 30 questions to the "illiterate voter," 20 of which must be answered correctly. Considerable discretion remains with the registrar in deciding who shall have to answer questions and whether the answers are correct. . . .

Laws requiring purging the names of voters who have failed to vote in the past 2 years are being applied throughout the State now. Those who fail to vote must seek reinstatement or must go through the entire registration procedure afresh. Here again there is room for the practice of local discrimination.

The Georgia committee gave an example of a registrar's discretion. In Terrell County the chairman of the county board of registrars gave as grounds for denying registration to four Negro school teachers that in their reading test they "pronounced 'equity as 'eequity,' and all had trouble with the word 'original.'" The chairman of the registrars "said that he interpreted Georgia law to mean that applicants must 'read so I can understand.'"

The Georgia Advisory Committee concluded that, "While continued chipping away at discrimination may be expected in urban areas, subtle and sometimes not-so-subtle campaigns to reduce or discourage Negro voting in those counties with heavy colored populations may be expected."

#### NEW YORK

It is estimated that 600,000 American citizens who have migrated from the island Commonwealth of Puerto Rico live in New York City. About 190,000 of these people have lived there long enough to satisfy the State's residence requirements for voting. But many of them are not permitted to vote because they cannot pass the New York State literacy test which provides that "\* \* \* no person shall become entitled to vote \* \* \* unless such person is also able, except for physical disability, to read and write English."

Approximately 59 percent of the Puerto Rican residents of New York read and write only Spanish; they are served by three Spanish-

language newspapers having a combined daily circulation of 82,000. One such person, Jose Camacho, a resident of Bronx County, N.Y., filed a suit against the election officials in his home county seeking registration to vote; he also filed a formal complaint with the Commission on Civil Rights. Camacho's petition was denied by the Supreme Court of Bronx County, and at this writing was pending before the New York Court of Appeals.

Camacho's contention is that denial of the right to vote because he and others similarly situated are not literate in the English language constitutes a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment. Fundamentally, his case rests upon provisions of the Treaty of Paris, by which war with Spain was concluded and Puerto Rico ceded to the United States. This treaty provided that the civil rights of the native inhabitants should be fixed by the Congress, but left to the inhabitants the choice of adopting English or retaining Spanish as their official language. The Congress gave all inhabitants of Puerto Rico full American citizenship in 1917. The people chose Spanish as their language. But the United States Supreme Court has ruled that, "The protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue."

Unlike the other voting complaints, that of Mr. Camacho raises legal rather than factual issues, and Mr. Camacho has filed a counterpart case in the courts. This Commission regards the courts as the proper tribunals for determination of legal issues. However, this Commission has found that Puerto Rican American citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York.

#### CHAPTER IV. THE ALABAMA HEARING

On September 8, 1958, the Commission on Civil Rights received its first sworn complaints from American citizens who alleged that they had themselves been denied the right to vote because of color and race. The 14 affidavits were contained in a letter from William P. Mitchell, of Tuskegee, Ala., secretary of the Tuskegee Civic Association and chairman of its Voter Franchise Committee.

The complainants were Negro residents of Macon County and its chief town, Tuskegee, site of the famous college for Negroes founded by Booker T. Washington in 1881. They included teachers, housewives, students, farmers, and U.S. Civil Service employes at the Veterans' Administration hospital near Tuskegee.

Mr. Mitchell, though a Negro, was not among the complainants, for he himself was a registered elector of Macon County. But before becoming a voter, he had been required to make three visits to the Macon County Board of Registrars, two appearances before a Federal trial court, two appeals to the Fifth Circuit Court, and one petition to the Supreme Court of the United States. His efforts extended over 3 years.

The original affidavits, found to be in proper form, were presented to the members of the Commission on September 9. The Commission unanimously decided that an investigation should be made in Alabama.

At this point the Commission established a basic policy to govern the conduct of its field investigations. The presence of Commission investigators in a State, and the nature of the investigation, would be made known to high State officials—if possible, the Governor and the Attorney General. Agents of the Commission would not seek out representatives of the public information media, but neither would they move about *sub rosa*. And under no circumstances would the names of complainants or any identifying details of the complaints be revealed.

The preliminary survey was conducted between September 25 and September 28, 1958, by the Director of the Commission's Office of Complaints, Information and Survey, who called at the offices of Attorney General John Patterson, the Democratic nominee for Governor of Alabama and so, in effect, the Governor-elect. McDonald Gallion, the Democratic nominee for attorney general, also was informed that the investigation had begun.

At no time have Commission representatives solicited voting complaints, in Alabama or elsewhere. However, during the preliminary survey in Alabama, 13 persons—all Negroes—sought out the Commission's agent and asked that they be allowed to tell of the failure of their efforts to register. All firmly believed that they had been denied registration because of their race and color. These Macon County Negroes subsequently mailed voting complaints to the Commission's offices in Washington.

In Tuskegee, the Commission's Director of Complaints, Information and Survey made arrangements with the chairman of the Macon County Board of Registrars for Commission agents to examine the county's voter registration records. The examination was set for Monday, October 20, 1958.

But when the Commission agents arrived at the courthouse on the appointed date, the Registrar chairman informed them that, by order of Attorney General Patterson, the Commission on Civil Rights would be denied access to the records.

The Commission thus encountered the first official resistance to its attempt to carry out the task assigned to it by the Congress of the United States.

At its monthly meeting on October 22, the Commission voted unanimously to hold a hearing on the Alabama complaints. The hearing, in Montgomery, Ala., was set to begin December 8.

#### JUDGE WALLACE INTERVENES

Meanwhile, additional voting complaints—eventually totaling 97—were being received by the Commission from Negroes in six Alabama counties. The decision to file such an affidavit was seldom an easy one. Outside Macon County, which has a long history of Negro militancy, fear of possible discovery and resulting reprisals was frequently expressed. Because of mistrust of white notaries in Bullock County, for example, the formal complaints from that county were notarized in Macon County.

On October 28, another State official took action. Alabama Third Circuit Judge George C. Wallace, of Clayton, Barbour County, where one complaint had originated, impounded the voter registration records of the county.

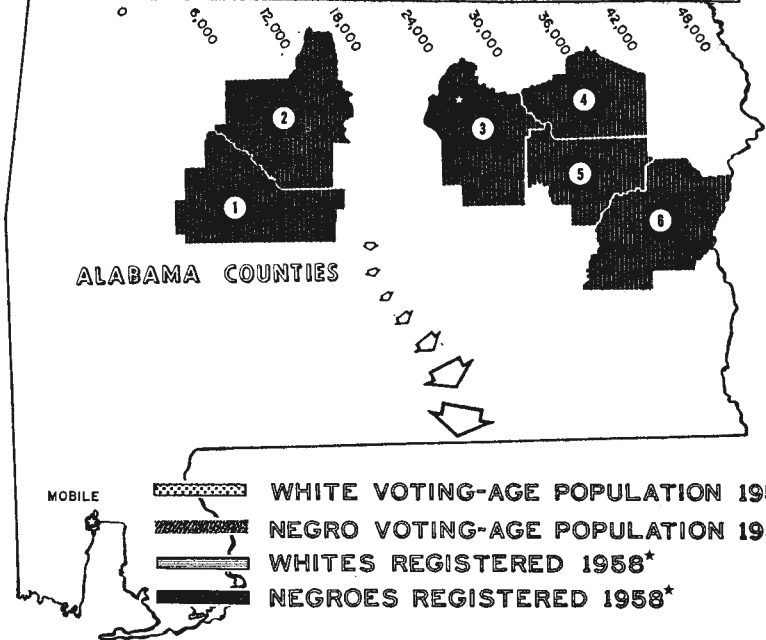
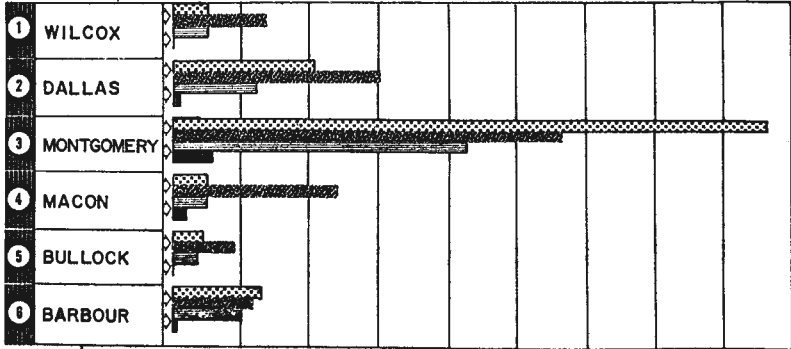
Commission subpoenas calling for the production of records were addressed to officials in Barbour, Bullock, Dallas, Lowndes, Macon, and Wilcox Counties. Between November 28 and December 2, five staff representatives served 66 subpoenas on complaining Negro witnesses and on white officials. Voting complaints had originated from all six counties except Lowndes, where the population was 82 percent nonwhite, but where not one Negro was registered to vote.



CHART IV.

# VOTING POPULATION IN 6 COUNTIES IN ALABAMA

FROM WHICH COMPLAINTS WERE RECEIVED



\* REGISTRATION FIGURES FROM BIRMINGHAM NEWS.

Montgomery County, where 20 complaints had originated, was not included. Shortly after it was announced that the Commission would hold hearings in Montgomery, the complainants and other Negroes began to receive certificates notifying them that they had been registered.

On November 21 Judge Wallace impounded the voter registration records of Bullock County, also in the third circuit. When served with a Commission subpoena calling for the Barbour and Bullock registration records, the judge replied to the press:

They are not going to get the records. And if any agent of the Civil Rights Commission comes down here to get them, they will be locked up.

#### REGISTRATION LAWS AND REGISTRARS

To qualify for registration in Alabama, under the 1951 statute which replaced the invalidated "Boswell amendment" (See chapter I), the applicant must be a citizen of the United States and of the State of Alabama and at least 21 years old. The applicant must be able to read and write any provision of the Constitution of the United States. He must be of "good character" and also must "embrace the duties and obligations of citizenship under the Constitution of the United States and under the constitution of the State of Alabama." He must not be an idiot or insane, or have committed any of some 30 crimes named in the nation's most extensive list of voting disqualifications. The applicant must also complete, without assistance, a lengthy questionnaire.

Members of boards of registrars are "constituted and declared to be judicial officers, to judicially determine if applicants to register have the qualifications" required. Boards of registrars are also authorized to make rules and regulations to expedite the registration process, and such rules and regulations have the force and effect of law.

But Alabama law prescribes no educational qualifications for registrars. To be eligible, it is only necessary that one be a resident and an elector of the county, be "reputable," and not hold an elective public office. There is no continuing supervision of the boards by the State, and each board applies the law according to its own interpretation and judgment without reference to the practices of other boards.

This, plus the allegations in the 91 sworn affidavits thus far received, was the information the Commission had in hand as it met in Montgomery to hear both sides of the voting controversy in Alabama.

#### THE MONTGOMERY HEARING

The hearing began at 9 a.m. on December 8, 1958, in the crowded Fifth Circuit courtroom in the Federal Building in Montgomery.

Two dozen newsmen sat at the press tables, and four television cameras whirred quietly in the rear. In his opening statement Chairman John A. Hannah explained the Commission's responsibility with respect to the investigation of voting complaints. He then emphasized four points that have been the guidelines of the Commission and its staff since its organization:

The Commission is an independent agency in no manner connected, even administratively, with the Department of Justice.

The Commission is a factfinding body possessing no enforcement powers.

The Commission and its staff at all times stress the necessity for objectivity in their search for the facts in any matter before the Commission.

The Commission is not a protagonist for one view or another.

As Vice Chairman Storey took the chair to conduct the hearing, he sounded a note of national unity. "My father was born in Alabama," he recalled, "reared here and educated before he emigrated to Texas. I have close relatives and many good friends in this State. My grandfathers were Confederate soldiers. So, there are many thoughts and memories going through my mind as we meet in Montgomery, the cradle of the Confederacy; but history moves on. We are one nation now. Hence this bipartisan Commission, composed of two presidents of great universities and four lawyers, has a solemn duty to perform. We are sworn to uphold the Constitution of the United States."

William P. Mitchell, of Macon County, who had forwarded the original complaints, was the first witness. In 1950, Macon County had a population of 30,561. Of these, 4,777 were white persons and 25,784 were nonwhite. But the 1958 voter registration list (presumably after some rise in population) showed 3,102 white voters and only 1,218 Negro voters. Macon County ranks first in the State in the proportion of its Negroes aged 25 or over who have at least a high school education, and in the percentage of Negro residents who hold college degrees.

Not content to hold the line against new Negro voters, the city of Tuskegee recently moved to decrease the number already voting in its elections. On July 15, 1957, the Alabama Legislature passed an act that gerrymandered the boundaries of the city. The city limits, previously forming a rectangle, now became a figure of 28 sides. The new boundaries excluded all but 10 of the 420 Negroes who formerly voted in city elections. Another measure enacted later authorized a similar gerrymander or even total abolition of Macon County itself.

The Macon County board required Negro and white applicants to use separate rooms. Negro complainants testified that, when seeking to register, they had been compelled to wait in line for 3 to 9 hours. Only two applicants at a time were admitted to the Negro room.

They were usually required to copy lengthy provisions of the U.S. Constitution.

A Negro applicant must ordinarily supply a self-addressed envelope for notification of his acceptance, but the 25 unregistered Macon County Negroes who were witnesses at the Montgomery hearing testified unanimously that they had received no notification of either acceptance or rejection. Thus they were denied opportunity for a court appeal, which must be made within 30 days after notice of rejection.

Another effective deterrent to Negro voting found in Macon County was a requirement that an applicant for registration be accompanied by a "voucher" who is a registered voter, and who must testify to the applicant's identity and qualifications. But a voter could vouch for only two applicants per year. In recent years, no white elector has vouched for a Negro applicant in Macon County.

Mr. Mitchell, in a statement submitted for the record, summed up the "tactics employed by the board which, we believe, are designed to keep Negro registration to a minimum":

1. The board's refusal to register Negroes in larger quarters.
2. Its failure to use the room which is assigned for the registration of Negroes to its fullest extent.
3. The board's requirement that only two Negroes can make applications simultaneously.
4. Its policy of registering whites and Negroes in separate rooms and in separate parts of the Macon County courthouse.
5. Its policy of permitting a Negro to vouch for only two applicants per year.
6. Its requirement that Negro applicants must read and copy long articles of the U.S. Constitution.
7. Its failure to take applications from Negroes on several regular registration days.
8. Its failure to issue certificates of registration to Negroes immediately upon proper completion of the application form. . . .

Thirty-three unregistered Negro witnesses from four Alabama counties added further details that morning and the next. A few of them had attempted to register only once; most of them had tried two or three times, some five or six, and one, about 10 times. Their stories were essentially similar.

They would arrive at the courthouse very early on a registration day, often to find other Negroes waiting in line for the registration office to open at 9 o'clock. Usually, the wait was long—up to nine hours—and often the applicant would have to return several times before even being admitted to the small room set aside for Negro applicants.

Mrs. Marie Williams, college-educated and a lifelong resident of Alabama, testified that she had made five attempts to register since

July 3, 1957. On that date, she arrived at the courthouse at 8 a.m., got into the registration room at 2:30 p.m., but had to return the next morning to complete her application. When she again attempted to register in July 1958, she waited from 8 a.m. until about 3 p.m. There were similar delays when she tried to register on two occasions in September 1958 and one time in November 1958. Each time she went through the entire process.

After self-addressing an envelope, the would-be Negro registrant usually faced another long and fruitless wait for an answer that never came. All except 6 of the 33 witnesses had returned after the first attempt and were required to repeat the entire process. And if the Negroes were insistent enough to take their plea to the courts, there was the possibility that the board would simply cease to operate.

The difficulties confronting Negroes who wish to vote in Dallas, Wilcox, and Lowndes counties were described by Mrs. Amelia Platts Boynton, a registered voter, who had lived in Selma, Dallas County, about 30 years. As manager of a life insurance company, she had traveled regularly in Dallas, Lowndes, Macon, Montgomery, Perry, and Wilcox counties for 19 years, and talked with many Negroes about registration and voting problems.

Mrs. Boynton testified that Dallas County had a population of "fifty-some odd thousand," of which "there are around 18,000 Negroes above 21 years of age." Negroes outnumber whites by almost two to one, but some 8,800 whites were registered, against only 125 Negroes. As Commissioner Wilkins noted, this is a ratio of almost 80 to 1. The disparity in Lowndes County was even greater. In 1950 there were 2,154 whites and 8,054 Negroes over 21 in Lowndes County; in 1958 more than 1,500 whites were registered, but not one Negro. Furthermore, Mrs. Boynton said, no Negro had ever sought to be registered in Lowndes County "because of the economic pressure that has been brought already on some whom they thought were perhaps members of the NAACP years ago. . . ."

Mrs. Boynton cited two cases of Negro retail merchants in Lowndes County who were refused service and deliveries by white wholesalers. Obstacles to securing or renewing mortgages, and the use of demand notes, also were cited as examples of "economic pressure" exerted upon Negroes.

Similarly, although she knew of some Negroes who had attempted to register, no Negroes were registered in Wilcox County. She testified that a Negro minister had been turned down by a Wilcox board member thus: "Well, now, you're all right. I could register you, but to register you means that I have to register other Negroes, and for that reason it's better not to register you."

## WHY DID THEY WANT TO VOTE?

Among the 33 Negro witnesses who testified that they had not been allowed to register were 10 college graduates, 6 of whom held doctorate degrees. Only 7 of the 33 had not completed high school; all were literate. Most of them were property owners and taxpayers. Some had voted in other States. Among them were war veterans, including two who had been decorated, respectively, with four and five Bronze battle stars.

They expressed no doubt about why they had not been permitted to register. The reason was stated most memorably by a Macon County farmer with only 6 years of schooling:

Well, I have never been arrested and always has been a law-abiding citizen; to the best of my opinion has no mental deficiency, and my mind couldn't fall on nothing but only, since I come up to these other requirements, that I was just a Negro. That's all.

And why did they want to vote?

Mrs. Bettye F. Henderson, of Tuskegee, who holds a bachelor of science degree, told the Commission:

I want to vote because it is a right and privilege guaranteed us under the Constitution. It is a duty of citizens, and I have four children to whom I would like to be an example in performing that duty, and I want them to feel that they are growing up in a democracy where they will have the same rights and privileges as other American citizens.

Said the Rev. Kenneth L. Buford, a homeowner and holder of two college degrees:

I would like to vote because it is a right that should be accorded me as a citizen of the United States. I feel that I cannot be a good citizen unless I do have the right to vote. I am a taxpayer and I feel that if I am denied the right to vote it represents taxation without representation.

The youngest witness, Miss Fidelia JoAnne Adams, a bachelor of science who was working on her master's degree in organic chemistry, declared:

. . . The Government of the United States is based on the fact that the governed govern, and only as long as the people are able to express their opinion through voting will our country be able to remain the great power that it is.

Charles E. Miller, a veteran of the Korean war who lives in Tuskegee, offered this explanation:

. . . I have dodged bombs and almost gotten killed, and then come back and being denied to vote—I don't like it. I want to vote and I want to take part in this type of government. I have taken part in it when I was in the service. I think I should take part in it when I am a civilian.

## THE ALABAMA ANSWER

Having heard the Negro complainants, the Commission prepared in the afternoon session of the first day to hear the rejoinders of registration officials and custodians of registration records.

After the noon recess, the records of Macon County Probate Judge William Varner were brought into the courtroom. Judge Varner had agreed, with some hesitation, to appear and permit the Commission to examine his subpoenaed records in Montgomery despite a letter he had received from the Attorney General of the State advising him that he had no authority to move the records from Macon County. A probate judge's records include data on numbers of white and Negro voters and on poll tax payments.

When Judge Varner was called as a witness, Attorney General John Patterson, who became Governor of Alabama a month later, addressed the Commission from the front row of seats.

Mr. PATTERSON. There are certain serious constitutional objections that we want to raise in this hearing, and we are somewhat afraid that it might subsequently be considered as a waiver of our objection if we don't raise them at this time. Now, Judge Varner is the probate judge of Macon County. He is a constitutional judicial officer of this State, and he is expressly prohibited by law from taking the records of his office outside of his county except under certain unusual circumstances.

We feel that, in addition to that, this Commission, which is the Civil Rights Commission, which is an arm of the legislative [sic] branch of the Government, has no constitutional right to call a judicial officer in here and question him about the affairs of his court, and we want to raise that objection at this time.

VICE CHAIRMAN STOREY. \* \* \* You have that privilege, but I don't think you will find the Commission transgressing on any constitutional rights; and we will proceed with the examination of Judge Varner.

But Judge Varner's testimony proved to be singularly unproductive. Though he had been judge of probate in Macon County for 21 years, and hence the guardian of its registration certificates and voting lists, he professed himself unable to supply any information about the activities of the boards of registrars.

Following Judge Varner on the stand was Mr. Grady Rogers, a member of the Macon County Board of Registrars. Mr. Rogers answered questions about administrative practices of the board, but balked when Vice Chairman Storey said: "Now, according to the testimony here, the white people go to the grand jury room."

Mr. Rogers' first response was, "At times"; then: "I don't care to answer that question on the advice of counsel."

Vice Chairman Storey inquired: "Why do you refuse to answer it?"

"Because it might tend to incriminate me."

"You do have another room, do you not?"

“The same answer.”

“Now, so we will get it in the record, you refuse to answer because it might be self-incrimination; is that correct, sir?” After consultation with Attorney General Patterson, Mr. Rogers finally answered: “And also, in addition to the other answer to the first question that applies to this question, because I am a judicial officer under the State laws of Alabama and my actions cannot be inquired into by this body.”

In the course of further questioning, it developed that Mr. Rogers and other registrars who had been subpoenaed had not been sworn during a mass oath-taking that morning. At this point, after a consultation with the Attorney General, Mr. Rogers told the Commission that he objected to taking the oath.

Vice Chairman Storey then ordered a roll call of the subpoenaed State officials and asked each whether he had been sworn. W. A. Stokes, Sr., and J. W. Spencer, Barbour County registrars; M. T. Evans, Bullock County registrar, and Mr. Livingston and Mr. Rogers of Macon County refused to be sworn.

#### “WE HAVE NO BLACKS”

The probate judges of Barbour, Wilcox, Lowndes, and Dallas Counties proved little more informative. All appeared without their records, which had been impounded by State court subpoenas received—by three of the four—after the Commission subpoenas.

When Commissioner Wilkins asked Probate Judge Harrell Hammonds, of Lowndes County, if it were true that there were no Negroes registered in his county, the judge replied, “That’s what they say.”

“In other words,” Commissioner Wilkins continued, “out of a population of 17,000 or 18,000—14,000 or 15,000 Negroes and 3,000 or 4,000 whites—you have approximately 2,200 or 2,300 whites registered and not a single Negro? . . . Don’t you think that is a rather unusual and peculiar situation?”

“It might be unusual, peculiar in some places; yes,” answered Judge Hammonds.

Mrs. Dorothy Woodruff, one of the three Lowndes County registrars, testified that, except for filling out the application, applicants were not required to demonstrate their literacy, nor were they required to self-address an envelope.

“. . . After we meet, we discuss it and if their qualifications are up to par we send them their certificate . . . We have never had any that haven’t been up to par,” Mrs. Woodruff testified. When Vice Chairman Storey asked, “Is that true as to both the blacks and the whites?” she replied: “We have no blacks.”



Neither she nor Clyde A. Day, another Lowndes County registrar, could offer any explanation of why no Negro had applied for registration during their terms of office.

#### COMMISSIONER BATTLE SPEAKS

Earlier in the afternoon Commissioner Battle, directing a question to Mr. Rogers, had said :

Mr. Livingston, will you listen to this, too, please, sir? This morning we have heard some 20 or 25 people testify that they have been denied the right to register in your county. They each stated that in their opinion it was on account of their race. Would either of you gentlemen care to make any statement as to why any of those would-be registrants were denied the right to register?

Neither Macon County registrar cared to make such a statement.

Now, after the final witness of the day had been heard, Commissioner Battle, a former Governor of Virginia, read a statement as follows :

Mr. Chairman, and ladies and gentlemen. Like Dean Storey, I have come to the State of my ancestors. My father was proud to be an Alabamian. My grandfather, Cullen A. Battle, was my constant companion during my boyhood days and, in the War Between the States, the commanding officer of a brigade of Alabama troops which was honored by a resolution of the Confederate Congress, thanking the Alabama officers and Alabama men for their service to the Confederacy.

My grandfather was subsequently denied his seat in Congress, to which the people of Alabama had elected him, because he had served the Confederate cause.

So, I come to the people of Alabama as a friend—I think I may be permitted to say—returning to the house of my father, and none of you white citizens and officials of Alabama believe more strongly than I do in the segregation of the races as the right and proper way of life in the South. It is, in my judgment, the only way in which racial integrity can be preserved and thus prove beneficial to both races.

The President of the United States was not in error when, in asking me to serve as a member of this Commission, he said he wanted someone with strong Southern sentiments, which I have, and I accepted this assignment in the hope that I might be of some service to my country and to the Southland.

It is from this background, ladies and gentlemen, that I am constrained to say, in all friendliness, that I fear the officials of Alabama and certain of its counties have made an error in doing that which appears to be an attempt to cover up their actions in relation to the exercise of the ballot by some people who may be entitled thereto.

The majority of the members of the next Congress will not be sympathetic to the South, and punitive legislation may be passed, and this hearing may be used in the advocacy of that legislation, which will react adversely to us in Virginia and to you in Alabama.

Of course, it is not up to me, nor would I presume to suggest how any counsel or any official should govern himself; but we are adjourning this hearing until tomorrow morning, and may I say to you, as one who is tremendously interested

in the southern cause: Will you kindly reevaluate the situation and see if there is not some way you, in fairness to your convictions, to the officials, may cooperate a little bit more fully with this Commission and not have it said by our enemies in Congress that the people of Alabama were not willing to explain their conduct when requested to do so?

This may be entirely out of order, ladies and gentlemen, but it was in my heart to say it, and I hope you will take it in the spirit in which I say it.

Next morning, Editor Grover C. Hall of *The Montgomery Advertiser*, one of the South's most articulate spokesmen, wrote:

We do not find it easy to take an unmodified position on the noncompliance of the Alabama officials summoned before the U.S. Civil Rights Commission. . . .

*The Advertiser* will be blunt about the matter.

The refusal of the officials to testify or offer their voter registration records will be construed as an effort to hide something. . . .

Would it not have been better, as Governor Battle reasoned, to fork them over and avoid all the commotion? . . . When it is already notorious that there are counties like Lowndes and Wilcox without a single Negro voter, the revelation would only confirm the obvious.

There must be some Negroes in these counties qualified by *Alabama* law to vote.

The *Lee County* (Ala.) Bulletin, published in the heart of the "Black Belt," had this to say:

Mr. Patterson's pugnacious attitude cannot help but create the impression in other parts of the country that we've got something to hide.

*The Atlanta Constitution* said that "there can be no doubt that . . . Governor Battle [is] correct," and added: "But if they will not heed him they will heed no one and the tragedy will have to be played out to the bitter end." Later, in an editorial urging the extension of the Commission on Civil Rights, *The Constitution* remarked: "The irresponsible defiance of this Commission in Alabama has done the South's cause more harm than anything since the hate bombings."

Alabama officials were unmoved. Attorney General Patterson's answer was in the press a few hours after Commissioner Battle made his plea. Mr. Patterson denied that Alabama "has anything to hide." He said that—

all citizens both black and white have been treated fairly, justly, and impartially. . . . Our duty in this case is clear: We must do everything within our power to prevent this unlawful invasion of the State of Alabama's judicial officers by the legislative and executive arms of the Federal Government, the Civil Rights Commission in this instance. . . . In fights of this nature there can be no surrender of principle to expediency. The time for retreating has come to an end.

#### TO THE COURT

That evening—December 8—the Commission voted to turn the complete record of the proceedings over to the Attorney General of the United States for appropriate action.

The Attorney General promptly filed Civil Action No. 1487N in the United States District Court for the Middle District of Alabama, Northern Division. The suit sought a court order requiring the defendants to produce evidence (the records) and give testimony before the Commission. Representatives of the Department of Justice were counsel for the Government, as provided by the Civil Rights Act of 1957.

After some legal sparring by the defendants, United States District Judge Frank M. Johnson, Jr., entered an order commanding the contumacious witnesses to appear and testify, and produce the records called for, before the Commission or a subcommittee on January 9, 1959. A subsequent order specified that the Commission has the "right" to inspect the registration records of Barbour, Bullock, and Macon Counties. (No reason was given for excluding from the order the other counties under study by the Commission: Dallas, Lowndes, and Wilcox.) The inspection, ordered to take place before January 9, was to be made in the counties where the records were being kept.

Members of the Commission's staff then proceeded to the seats of the three counties named in the order. On January 9, the Commission reconvened the Alabama hearings in Montgomery to hear four members of the staff testify under oath as to what had been revealed by the examination of the registration records in these counties.

#### THE MACON COUNTY RECORDS

An examination of the Macon County records, they reported, had yielded the following information:

There were approved applications on which question No. 19 in the questionnaire (Will you give aid and comfort to the enemies of the United States Government or the Government of the State of Alabama?) had not been answered at all.

An applicant was rejected because she had listed the county of her birth but not the State.

One rejected application had no errors, but the applicant had failed to write in her name for the fourth time in question No. 3.

An applicant who had indicated continuous residence in the State since 1930 (only 2 years is required for registration) was rejected for failing to give the month and the day he had taken up residence.

No rejected application bore any indication that the applicant had been notified of rejection (an appeal to the courts must be made within 30 days).

In one set of applications examined, 51 Negroes had been required to copy article 2 of the U.S. Constitution, but only three white applicants were required to copy this same lengthy article.

There were accepted applications which had no copies of hand-written constitutional provisions attached, as required by Alabama law. Most of these were applications of white persons.

In a group of 17 applications marked "approved" were errors of the same type that had caused rejection of other applications. Sixteen of these 17 applicants were found to have been registered, and of these, 15 were white persons.

Despite the court order, staff representatives had been permitted to examine only two applications in Barbour County, and two in Bullock County, both in the third circuit of Judge George C. Wallace. There now began an elaborate game of hide-and-seek, in which Judge Wallace delayed obedience to the court order by turning the records over to grand juries in each county. The Barbour County records were the first to be produced and examined.

#### THE BARBOUR COUNTY RECORDS

Discussion with Registrar Spencer disclosed that white and Negro applicants used the same room while applying, but not usually at the same time. Barbour County registrars ordinarily asked a few questions, such as: Who is probate judge? Who is the circuit judge? Who is the State senator? Who is the sheriff? If these questions were answered to the satisfaction of the board, the applicant was given a questionnaire to complete. Applicants were not required to read or copy any part of the Constitution.

If errors are found on the questionnaire, which is examined in the presence of the applicant, it is returned with the statement, "You made a mistake," but the error is not identified.

Examination of the records available indicated that 607 whites and 15 Negro applicants were registered between July 1956 and April 1958. One hundred and fifteen questionnaires of persons found acceptable by the board were examined. Nineteen of these were submitted by Negroes and 96 by whites. The 115 forms disclosed 97 errors, with question No. 5 being answered erroneously by 52 applicants. Questions 1, 2, 3, and 19 were frequently omitted. One accepted white applicant had answered question No. 19 ("Will you give aid and comfort to the enemies of the U.S. Government or the government of Alabama?") with a reply as murky as the question: "No unless necessary." Another accepted white applicant answered question No. 3 ("Give the names of the places, respectively, where you have lived during the last 5 years; and the name or names by which you have been known during the last 5 years") with: "all the people of Clayton."

#### THE BULLOCK COUNTY RECORDS

Production of the Bullock County records was preceded by rumor of a grand jury stipulation which caused the Commission's Department of Justice counsel to advise against examining the records. Later, though the rumor was verified, he changed his stand. It was

the feeling of the Commission agents on the scene that the matter could have been handled more expeditiously by the Commission's own staff attorneys.

The 5-year-old official voting list of Bullock County showed only five registered Negroes in the county. M. T. Evans was the only registrar in Bullock County at the time, and since board action by a majority of the members is required by law, the Bullock County board had been inoperative since the resignation of its former chairman in mid-1957.

The board records finally produced were in confusing disorder. Because of this and the limited time available for examination, applications were selected at random.

The applications of 19 white registered electors contained one or more errors. However, each of the 19 was allowed to complete another questionnaire "for the record" which was attached to the first application. There was no evidence that any Negro applicant was ever given this "second chance." None of the forms examined had any copied constitutional provisions attached, as required by Alabama law. As in Macon County, if an applicant was registered, he was to be notified. But if registration was refused, no notice was given.

The "voucher" system was found to be the principal Bullock County device for denying Negroes the right to vote. A voucher, white or Negro, is permitted to vouch for only three applicants in any 3-year period. The record of one white voter showed that he had vouched for three white applicants, all of whom had been registered on July 1, 1957. This card bore the notation "three strikes out." The card of one of the five Negro registrants showed that he had vouched for three Negro applicants, none of whom was registered. But the Negro voter could not again vouch for an applicant for another 3 years.

Under the Bullock County system, the rejection of three applicants supported by each of the five qualified Negro voters in the county effectively prohibited for three years any application by the remaining 5,420 adult Negroes in the county.

#### FINDINGS

Having reviewed all of the evidence thus obtained by examination of registration records, and all of the testimony received in the hearing, the Commission unanimously adopted detailed official findings of fact specifying and confirming the denial of the right to vote in Alabama. The findings appear in the unabridged version of this report.

#### NOTHING TO HIDE?

Attorney General Patterson's assertion that "Alabama has nothing to hide" was followed in a few weeks by introduction of a bill in

the Alabama Senate requiring registrars to destroy within 30 days the applications and questionnaires of rejected applicants for registration. The bill, which passed both houses by unanimous vote was amended only to make destruction of the records permissive rather than mandatory. *The Montgomery Advertiser* hailed passage of the bill with the headline: "Alabama Legislature Hurls Legal Punch at U.S. Vote Probe."

Two months after the Commission's December hearing in Montgomery, the United States Department of Justice filed an action in the Federal District Court for the Middle District of Alabama to force the registration of qualified Negroes in Macon County. The suit named as defendants the two surviving members of the Macon County Board of Registrars, Grady Rogers and E. P. Livingston. However, Mr. Rogers and Mr. Livingston had meanwhile resigned from the board, so the court dismissed the suit for lack of a defendant.

#### AFTERMATH IN BIRMINGHAM: THE ASBURY HOWARD CASE

The facts about voting in some parts of Alabama which were brought out at the Commission's December hearing only hardened the determination of some Alabama citizens to bar Negroes from the voting booths. If this was not made clear by the passage of the bill permitting the destruction of registration applications, then a development in Bessemer, near Birmingham, left little doubt.

Asbury Howard, Sr., a Negro union leader in Bessemer, saw a cartoon of a praying Negro in the *Kansas City Call*, a Negro newspaper. Mr. Howard thought it would be suitable for reproduction on a placard urging Negroes to register and vote. He employed a white sign painter to make the placard.

On Thursday, January 29, 1959, Police Chief George Barron, of Bessemer went to the sign painter's shop. The placard was still on the drawing board. It had not been publicly displayed. Chief Barron arrested the sign painter, charging him with violation of section 2572 of the Bessemer city code, which prohibits the publication of libelous and obscene material. Chief Barron then went to the service station operated by Mr. Howard and arrested him. Later, in jail, Mr. Howard also was charged with violating section 2572.

Trial was set for January 24, 1959, before City Recorder James Hammonds. Negroes who came to the city hall that day were searched before being permitted to enter. White persons who came to hear the trial were not. The sign painter, who did not have a lawyer, entered a plea of guilty.

Asbury Howard's lawyer entered a plea of not guilty. Chief Barron was the sole witness for the city. He testified that he went to the sign painter's office on a "tip," confiscated the sign, learned who

had ordered it, and then arrested Mr. Howard. He conceded that Mr. Howard had committed no offense in his presence that day, nor had he been guilty of loud or boisterous conduct.

Mr. Howard was found guilty as charged. He and the sign painter were each sentenced to six months in jail and \$100 fine.

While David H. Wood, counsel for Mr. Howard, was occupied with details necessary for preparing an appeal for both defendants, Police Detective Lawson Grimes told Mr. Howard to leave the courtroom and go downstairs. Mr. Howard met a group of white men, later estimated to number about 40 or 50. Among them was a city policeman named Kendricks. Without provocation, the white men attacked Mr. Howard. His son, Asbury, Jr., called out a warning to his father at the moment of attack. Several white men prevented him from going to his father's aid, drawing knives and blackjacks from their pockets. As he pressed forward, he, too, was struck, knocked down, and beaten.

A police officer returned to the court room to inform Mr. Wood of what had happened, and the attorney hastened to the rescue of the Howards. The younger Howard was taken to jail, charged with resisting arrest and disorderly conduct, and released on \$600 bond.

Asbury Howard, Sr., was taken to Bessemer General Hospital, where his head wounds were closed with 10 stitches. At this writing, his conviction was still pending appeal.

The Alabama story is not ended.

## CHAPTER V. LOUISIANA ROADBLOCK

In November 1958 the first of a continuing stream of affidavits alleging denial of the right to vote were received by the Commission from Negro citizens of Louisiana. The complainants alleged either that they had been denied the right to register in the first place, or that, having been registered, their names were removed from the rolls and that they were not allowed to register again.

As with all complaints meeting the requirements of the Civil Rights Act, the Commission conducted a field investigation in which all the complainants were interviewed. It also collected all available voting statistics.

According to figures published by the Secretary of State of Louisiana, there were 132,506 Negroes registered in 1959 and 828,686 whites. Voting-age Negroes in 1950 comprised about 30 percent of the voting-age population; in 1959 they comprised 13 percent of the registered voters. In 18 of the State's 64 parishes more than half of the 1950 number of voting-age Negroes were registered. But in four parishes in which voting-age Negroes far outnumbered voting-age whites—East Carroll, Madison, Tensas, and West Feliciana—no Negro was registered in 1959. In nine other parishes with substantial voting-age Negro populations, fewer than 5 percent of voting-age Negroes were registered. Moreover, in 46 of the 64 parishes, the number of registered Negroes had declined since 1956, in some cases by dramatic proportions such as in Red River where the number dropped from 1,360 to 16, or St. Landry, from 13,060 to 7,821, or Webster, from 1,776 to 83. In only 14 parishes had Negro registration increased; in each case the increases were relatively slight.

TABLE 11. *Negro registration, selected Louisiana parishes using permanent registration*

Parish	1950 population	Registration			
		March 1956	October 1956	May 1958	November 1958
Bienville.....	19, 105	587	35	28	28
De Soto.....	24, 398	762	770	489	493
East Feliciana.....	19, 133	1, 361	1, 319	1, 224	450
Ouachita.....	74, 713	5, 782	889	799	776
St. Landry.....	78, 476	13, 050	13, 060	6, 440	7, 181
Union.....	19, 141	1, 600	1, 099	348	368



TABLE 12. *Negro registration, Louisiana parishes using periodic registration*

Parishes	1950 population	Registration			
		March 1956	October 1956	May 1958	November 1958
Caldwell.....	10, 293	450	124	38	38
Cameron.....	6, 244	236	184	47	76
Catahoula.....	11, 834	330	349	183	187
Concordia.....	14, 398	587	534	121	176
East Carroll.....	16, 302	0	0	0	0
Franklin.....	29, 376	650	649	232	304
Grant.....	14, 263	864	864	376	525
La Salle.....	12, 717	742	364	96	157
Lincoln.....	25, 782	1, 166	1, 011	441	470
Livingston.....	20, 054	1, 162	1, 252	428	564
Madison.....	17, 451	0	0	0	0
Morehouse.....	32, 038	935	947	196	205
Natchitoches.....	38, 144	2, 954	2, 993	998	1, 396
Point Coupee.....	21, 841	1, 319	1, 326	574	635
Red River.....	12, 113	1, 512	1, 362	15	15
Richland.....	26, 672	740	742	177	179
St. Bernard.....	11, 087	802	802	162	340
St. Helena.....	9, 013	1, 694	1, 614	851	1, 059
St. Mary.....	35, 848	2, 668	2, 670	2, 347	2, 659
Tensas.....	13, 209	0	0	0	0
Vernon.....	18, 974	891	892	588	640
Webster.....	35, 704	1, 769	1, 773	79	80
West Baton Rouge.....	11, 738	1, 017	1, 036	577	615
West Carroll.....	17, 248	292	292	69	70
West Feliciana.....	10, 169	0	0	0	0
Winn.....	16, 119	1, 430	1, 442	581	665

After these preliminary studies, the Commission moved to examine official State registration records. The request was made of Attorney General Jack Gremillion, who by State law serves as counsel for registrars in matters concerning the Federal Government. By agreement with the Attorney General, a Commission representative visited the registrars in two parishes—Caddo and Webster—on March 12, 1959. The Attorney General and several State and parish officials attended the meeting.

The registrars were questioned orally about their official practices. But examination of their records was denied under a Louisiana law which permits such examination only by a registered voter of the parish, and permits copying of the records only on petition of 25 registered voters.

Twice thereafter, William Shaw, counsel for the Joint Legislative Committee of the Louisiana Legislature, demanded in his capacity as attorney for the registrar of Claiborne Parish that the Commission disclose the names of the complainants from that parish. He asserted that their affidavits were false and that their identity was required for a grand jury presentment on a charge of perjury instituted by his client. He also mentioned Louisiana statutes on accessories

after the fact, stating that concealment of the identity of a person charged with crime would make the concealer liable for criminal prosecution. Attorney General Gremillion also tried several times to get the names. The Commission stood firm on its policy against divulging complainants' names.

Before deciding on a costly public hearing, the Commission resolved to try every other legitimate means of getting the needed information about voting in Louisiana. After negotiations between its Staff Director and the Louisiana Attorney General, the Commission prepared interrogatories to be answered under oath by the registrars of the parishes involved. Attorney General Gremillion promised his cooperation. But when the interrogatories were sent to registrars in 19 parishes, Mr. Gremillion took exception to the questions, and announced that he saw no purpose in answering them.

The Commission then decided to hold a hearing in Shreveport, Caddo Parish, La. on July 13, 1959. At this time, 78 sworn voting complaints had been received: 8 from Bienville Parish; 9 from Bossier Parish; 8 from Caddo Parish; 7 from Claiborne Parish; 11 from De Soto Parish; 2 from Jackson Parish; 1 from Ouachita Parish; 8 from Red River Parish, and 24 from Webster Parish.

On July 8, after weeks of legal preparation and field investigation by the Commission staff, United States District Judge Benjamin Dawkins informed the Commission that the Attorney General of Louisiana intended to apply for a temporary restraining order to enjoin the Commission from holding its July 13 hearing. (The Attorney General had recently been confronted with a U.S. Department of Justice suit concerning a purge of Negro voters in Washington Parish.) Two days later, the suit was filed against members of the Commission both individually and in their representative capacity.

Judge Dawkins granted Commission representatives 90 minutes to prepare their response. The Attorney General of the United States, advised of the development, instructed the Commission agents to proceed as best they could until his own agents could reach Shreveport to defend the Commission in the suit.

While the Commission was preparing its answer, Vice Chairman Storey, a former president of the American Bar Association, was personally served by the U.S. marshal with complaints in two civil actions. One was a suit brought by the registrars in their individual capacities and as registrars against the Commissioners individually and as members of the Commission. This suit challenged the constitutionality of the Civil Rights Act of 1957, which created the Commission. The other suit was brought on behalf of various citizens of Louisiana who had been subpoenaed by the Commission to testify

concerning their activities in purging registered voters and any knowledge they might have as former registrars.

At 5:30 p.m. on July 12, less than 16 hours before the Commission hearing was scheduled to begin, Judge Dawkins issued the restraining order. As a Federal executive agency, he ruled, the Commission is subject to the Administrative Procedure Act which requires that persons affected by agency action must be timely informed of the matters of fact and law asserted. Recalling the traditional right to be confronted by one's accusers and allowed to cross-examine them, Judge Dawkins declared that there was every reason to believe that some of the complainants who had filed affidavits with the Commission—

will testify that plaintiffs have violated either the State or Federal laws, or both. Plaintiffs thus will be condemned out of the mouths of these witnesses and plaintiffs' testimony alone, without having the right to cross-examine and thereby to test the truth of such assertions, may not be adequate to meet or overcome the charges, thus permitting plaintiffs to be stigmatized and held up, before the eyes of the Nation, to opprobrium and scorn.

Judge Dawkins concluded with a statement that the constitutionality of the 1957 Civil Rights Act would be adjudicated by a three-judge Federal court.

Commenting on the Judge's ruling, the *Washington Post* observed:

The Administrative Procedure Act was intended to apply to agencies which make rules or adjudicate cases. The Civil Rights Commission does neither, of course. It is a fact-finding body. . . . To require it to file formal charges and go through the courtroom practice of cross-examination, when it is not prosecuting or trying or judging anyone—when it is not engaged in any sort of adversary proceeding—would be sheer nonsense making the discharge of its real function impossible.

Meanwhile, in Shreveport, staff members added up costs of preparing for the hearing and found that those which would have to be incurred again if the Judge's order were set aside and the hearing finally held were over \$12,000. The Commission decided to ask that the plaintiffs be required to post a \$10,000 security bond. Judge Dawkins refused. This time he concluded with the observation that, while his restraining order might be set aside as wrongful, "it is all part of the game."

#### THE LOUISIANA COMPLAINTS

The testimony which complaining witnesses had been prepared to offer at the Shreveport hearing, plus the Commission's own field investigations, indicated three major techniques of voting denial.

*First*, in the parishes of Madison and East Carroll, no Negro was registered, or had ever been registered to vote. Seven witnesses were prepared to testify concerning the situation in these parishes. An effective bar to Negro registration is the requirement exacted by the

registrars that each prospective registrant obtain two registered voters to swear to his identity. Since no Negroes were registered in either parish, and since no white person (with one exception) would vouch for a prospective Negro registrant, the complainants were effectively stalled. One of the witnesses, a former Army sergeant and still an active reservist, had fought on the Normandy beaches, been awarded four battle stars, was adequately educated, and apparently well qualified to vote.

*Second*, in the parishes surrounding and including Shreveport several of the witnesses had been excluded from registration by preliminary questioning on the part of the registrars before even receiving a registration form. This process is without sanction in Louisiana law. Some of the witnesses had voted in other States before trying to register in Louisiana; others were veterans, professional people, and educators. In other parishes in this area complainants had been registered for some years, but were purged from the registration lists. Upon attempting to reregister they were met with the rigid standards arbitrarily imposed as a result of the campaign initiated by the Joint Legislative Committee of the Louisiana Legislature in December 1958, and continuing in January and February 1959. The announced purpose of the chairman of the joint legislative committee was to reduce Negro registration in the State of Louisiana from 130,000 to 13,000.

At a series of meetings held throughout the State in these months, registrars were instructed in the procedures of a strict interpretation of the Louisiana registration laws. The instruction was directed by State Senator William Rainach, chairman of the Joint Legislative Committee, but was conveyed to the registrars by the committee's attorney, William Shaw. At the meetings Mr. Shaw documented his instructions by reference to statutes, legal opinions, and particularly the booklet, "Voter Qualification Laws in Louisiana." The front and inside covers of this Citizens Council pamphlet are reproduced on the following page.

In instructing the registrars, Mr. Shaw stressed that applicants must be of good character and be able to interpret any clause of the Constitutions of Louisiana or the United States. As a test of intelligence, he advised the registrars to use a set of 24 model cards distributed at the meetings. One of them is reproduced below. Mr. Shaw asserted that constitutional interpretations are tests of native intelligence and not of book learning; that experience teaches that most white people have this native intelligence while most Negroes do not. As a further precaution, however, he instructed the registrars not to help any Negro applicant fill out his application card by telling him the number of his ward or precinct.

## Facsimile of Instructions for Registrars and Others in Louisiana

# Voter Qualification Laws In Louisiana

---



---

## The Key To Victory In The Segregation Struggle

---



---



**A Manual of Procedure For Registrars  
of Voters, Police Jurors and  
Citizens' Councils**

December, 1958

### - Foreword -

#### **Bloc Control — The Goal of the NAACP and the Communists**

The Communists and the NAACP plan to register and vote every colored person of age in the South. While the South has slept, they have made serious progress toward their goal in all the Southern states, including Louisiana.

They are not concerned with whether or not the colored bloc is registered in accordance with law. They are interested only in seeing that all persons in this bloc are registered and in using their votes to set up a federal dictatorship in the United States.

They plan to divide the people of the South, and to take us over, state by state, and parish by parish. They would do this by trading the minority bloc back and forth between our split-up factions until we have sold our heritage of freedom and self-government for a shifting parcel of NAACP and Communist controlled votes.

#### **The Enforcement of Voter Qualifications Laws in Louisiana**

At least ninety percent of the bloc that they plan to misuse would have to be registered illegally in Louisiana because ninety percent of them cannot meet the voter qualifications prescribed by law. In fact, ninety percent of this bloc now registered and being used by the NAACP to control some of our elections, are registered in violation of our laws and illegally influencing the election of our officials.

#### **The People, the Officials and the Citizens' Councils in Law Enforcement**

It has become vitally important that the people see to it themselves that the Registrars of Voters throughout the state comply fully with the provisions for qualifications of voters set forth in our Constitution and our Statutes.

The ACCL has prepared this manual of legal procedure which Registrars in Louisiana may follow in preventing illegal registration. The manual outlines the methods by which parties who have been registered illegally may be removed by law from the registration rolls.

The consistent use of this manual will be especially helpful to our state and local officials, and local Citizens' Councils in lending the Registrars of Voters the support and guidance that they must have in carrying out the all-important job of enforcing our voter qualification laws.

#### **The Key to Victory**

We are in a life and death struggle with the Communists and the NAACP to maintain segregation and to preserve the liberties of our people.

The impartial enforcement of our laws is the **KEY TO VICTORY** in this struggle.

(1)

## Facsimile of Constitutional Test for Registration of Voters Used in Louisiana

Form No. 5

### CONSTITUTIONAL TEST FOR REGISTRATION

Applicant shall read to the Registrar of Voters and give a reasonable interpretation of the following clauses of the Constitution:

The Legislature shall provide by law for change of venue in civil and criminal cases  
(Art. 7 Sec. 45 La. Const.)

The exercise of the police power of the State shall never be abridged  
(Art. 19 Sec. 18 La. Const.)

Prescription shall not run against the State in any civil matter  
(Art. 19 Sec. 16 La. Const.)

(The above qualification test and a registration application form provided for by Section 1 (c), Article VIII of the Louisiana Constitution, (Form LR-1), were received by me from the \_\_\_\_\_ Parish Registrar of Voters upon my request to register, and I have signed both for acknowledgement and identification with my application to register.)

\_\_\_\_\_  
Applicant for Registration

Ward \_\_\_\_\_ Precinct \_\_\_\_\_ Address \_\_\_\_\_  
(Over)

Senator Rainach himself informed the registrars that "you don't have to discriminate against Negroes" to keep them off registration rolls, because "nature has already discriminated against them." Proclaiming that "a large number of Negroes just can't pass the test for registration," he concluded: "The tests are based on intelligence, not education, and intelligence is something that is bred into people through long generations."

*Third*, in Washington Parish during May, June, and July of 1959, over 1,300 of approximately 1,500 Negro registrants were stricken from the rolls on the basis of challenges filed by members of the Citizens Council of that parish. Virtually all of the Negroes whose names were removed from the rolls had been challenged by four white residents of Washington Parish. The most common basis for these challenges was alleged errors in spelling on the application forms. Investigation revealed that the challengers themselves misspelled words when filling out the challenging affidavits. For a sample, in which the voter seems to be charged with an "error in spelling," with names of voter and challengers maked out, see next page.

Facsimile of Affidavit Used for Challenging the Registration of a Voter in Louisiana

AFFIDAVIT IN CASE REGISTRATION OF VOTER IS CHALLENGED

STATE OF LOUISIANA

PARISH OF Washington

Personally came and appeared before me Curtis M. Horn

(Deputy) Registrar of Voters in and for the Parish of Washington State of Louisiana.

and \_\_\_\_\_ who being duly sworn, do depose and say:

That they are bona fide registered voters of this parish; that after reasonable investigation by them, and each of them, and on information and belief, that \_\_\_\_\_

Registered from \_\_\_\_\_ (Municipal number and street, if any)

To whom was issued registration certificate No. \_\_\_\_\_ Ward \_\_\_\_\_

Precinct \_\_\_\_\_, of this Parish, is illegally registered or has lost his or her right to vote in the precinct, ward or parish in which they are registered, for the following reasons:

Error in Spelling

And should be erased from the Official Precinct Register of Ward \_\_\_\_\_, Precinct \_\_\_\_\_, that this affidavit is made for the purpose of causing said name to be erased.

Sworn to and subscribed before me, on this 26 day of May, 19 59

Curtis M. Horn  
(Deputy) Registrar of Voters

## CHAPTER VI. FEDERAL PROTECTION OF THE RIGHT TO VOTE

The events reported in the preceding chapters have convinced this Commission that qualified American citizens are, because of their race or color, being denied their right to vote.

This betrayal of the ideal set forth in the Declaration of Independence is also in clear violation of the Constitution, whose Fifteenth Amendment provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

To the extent that the denial is carried out by State officials rather than by private intimidation, it is also a clear violation of the Constitution's Fourteenth Amendment, which provides that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

What can the Government of the United States do about these clear violations of its fundamental law?

Once, the answer to this question would also have been clear. During Reconstruction, Congress passed the Enforcement Act of 1870 and kindred measures which spelled out a detailed program for Federal supervision of elections in which Members of Congress were being chosen. Federal offenses were made of such activities as false registration, voting without legal right, making false returns of votes cast, bribery, interference in any manner with election officials, and neglect by any election official of duties imposed by State or Federal law. It was further provided that Federal judges might send Federal marshals to enforce these laws in person.

But in 1894 this legislation was repealed. Once again authority over voting was divided between Federal and State governments, where it remains.

Federal powers to protect the franchise are defined piecemeal in a multiplicity of constitutional provisions, statutes, and court decisions. Readers who wish a detailed review of these matters will find it in the unabridged edition of this report. Here, the heart of the present problem may be stated briefly.

The right of each State to determine the qualifications which its citizens must possess in order to vote is unquestioned. But it is not unlimited. Under the equal protection clause of the Fourteenth Amendment, any voting qualification established by a State must be one which can be applied equally to all persons. Thus a State may



require that every voter must be literate, but it could not require that every voter must be over six feet tall, blonde, and Aryan. The States are specifically forbidden by the Fifteenth and Nineteenth Amendments to require that a voter be white or male.

The Federal Government has clear legal authority to enforce these constitutional provisions regarding the right to vote, in any election involving choice of Federal officers. It can enforce these provisions against discriminatory State actions—the action of registrars, for example—in *any* election, city, State or Federal. In any election in which a Federal officer is to be chosen, it can protect the right to vote against interference by private citizens.

In the case of *Ex parte Yarbrough*, in 1884, the Supreme Court ruled that the right to vote for Members of Congress is one derived from and secured by the Constitution. In 1941, in *U.S. v. Classic*, a Court dictum went beyond the Fourteenth and Fifteenth Amendments to declare that this right may be protected not merely against actions of States but also against those of private individuals. The fact that State officers as well as national officers are being chosen, in an election held at the same time and place, does not nullify these Federal powers. In the Yarbrough decision, the Supreme Court noted that “it is only because the Congress of the United States through long habit and long years of forbearance has, in deference and respect to the States, refrained from the exercise of these powers, that they are now doubted.”

In practice, as the Court noted, the Federal Government has left the conduct of registration and elections almost wholly to the States, confining its intervention to such matters as the regulation of campaign contributions. Certain Federal statutes stemming from the Civil Rights Act of 1870 are still on the books, providing civil and criminal sanctions against interference with the right to vote. But these have thus far proven to be of limited application, and difficult to enforce.

When this Commission inquired concerning the number of racial voting complaints received by the U.S. Department of Justice in the past 5 years, Joseph M. F. Ryan, Jr., Acting Assistant Attorney General in charge of the Civil Rights Division, replied that “approximately 120 racial voting complaints were received by the Department” but that “the precise number of investigations which were made of these complaints is not presently available.”

After noting that the inadequacies of present voting-violations statutes “have long been recognized,” Mr. Ryan continued:

. . . The Department of Justice over the years has encountered serious difficulties in securing convictions for civil rights violations. Such prosecutive difficulties are compounded in cases of nonviolent racial discrimination, common to the voting field.

As an example of the Department's difficulties, Mr. Ryan cited its experience with a Federal grand jury in the western district of Louisiana in 1956-57. The jury returned no indictments when evidence was presented that 1,400 qualified Negro voters in three parishes had been illegally purged from the voting lists. It also chose not even to hear the complete evidence respecting a similar purge of some 4,700 qualified Negro voters in three additional parishes. It may be noted that while "Washington interference" is the cry commonly raised in civil rights cases, in all such cases, the prosecutor, grand jurors, judge, and trial jurors are normally residents of the community or area.

In the Civil Rights Act of 1957, which created this Commission, the Congress sought to remedy these "prosecutive difficulties" of criminal sanctions by reinforcing and extending Federal *civil* powers to protect the franchise. Section 1 of the Act of 1870, now codified as 42 U.S.C. sec. 1971, was amended by adding new enforcement provisions to its declaration now designated as subsection "a" that all citizens "otherwise qualified by law to vote" shall be allowed to vote in "any election by the people in any State, Territory, district, county, city, parish . . . without distinction of race, color, or previous condition of servitude." These four provisions were added:

(1) Section (b) declares that no person shall intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce, another for the purpose of interfering with his right to vote in any election in which a Federal officer is to be selected.

(2) Section (c) gives to the Attorney General of the United States power to institute, for or in the name of the United States, any civil action or proper proceeding for preventive relief, whenever any person has deprived or there are reasonable grounds to believe he is about to deprive another of rights secured in sections (a) and (b).

(3) Section (d) gives to the Federal district court jurisdiction of proceedings instituted under section (c). Of consequence is the provision that the Federal court shall entertain such proceedings without requiring that the party aggrieved first exhaust his State administrative or other remedies.

(4) Section (e) establishes contempt proceedings and provides for the rights of individuals cited for contempt of an order issued in an action instituted under section 1971.

The device of allowing the United States, through its Attorney General, to institute a civil action against infringement or threatened infringement of an individual's right to vote is a unique contribution to the field of voting protection. It appears to be the first time that the Federal Government has been empowered to act thus in the realm of civil rights. In addition to the fact that this is a civil proceeding for injunctive relief by a judge rather than a criminal prosecution before a jury, two other aspects are noteworthy. The Attorney General need not wait for a complaint from an intimidated

victim, but may bring suit even without his consent. And the action, bypassing State and local courts, may be initiated in a Federal district court, permitting relief before it is too late to be effective, i.e., before the election is held.

But in terms of securing and protecting the right to vote, the record of the Department of Justice's Civil Rights Division under the Civil Rights Act of 1957 is hardly more encouraging than it was before.

Nearly 2 years after passage of the Act, the Department of Justice had brought only three actions under its new powers to seek preventive civil relief, rather than criminal conviction, against any interference with the right to vote.

The Terrell County, Ga., action was dismissed on the ground that the relevant sections of the Act of 1957 are unconstitutional. Although the action had been brought against State officials in regard to registration for elections involving candidates for Federal office, the Federal district judge rejected it because the act provides—unconstitutionally, he thought—for action against private individuals, and in purely State or local elections.

As noted in Chapter IV, the Macon County, Ala., action was brought against two registrars, and was dismissed because the registrars had resigned, leaving no party defendant.

At this writing, the Washington Parish, La., action is still pending.

Thus the new Federal powers provided by the Act of 1957 have not been thoroughly tested.\* Mr. Ryan, of the Civil Rights Division, states that the Department of Justice's experience in the administra-

**\*COMMISSIONER JOHNSON :**

Section 131(c) of the Civil Rights Act of 1957 (42 U.S.C. 1971(c)) authorizes the Attorney General to "institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order" where "there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person" of the right to vote. The Commission's Report shows that this grant of power to the Attorney General has not been fully tested, having been invoked three times. Yet our findings also show that in 16 counties where Negroes constituted a majority of the 1950 voting-age population there are *no* Negroes registered to vote. In 49 other counties where Negroes constituted a majority of the 1950 voting-age population, some Negroes are registered, but in numbers representing fewer than *five* percent of each county's 1950 voting-age Negroes. The total absence of Negroes from the registration rolls or the registration of only a few in such counties in the writer's view warrants at least an investigation by the Department of Justice to ascertain whether there are not "reasonable grounds" to institute actions for the preventive relief authorized by the statute. Even if such investigations may be hampered by the inability to examine registration records, they should nonetheless be undertaken.

tion of the Civil Rights Act of 1957 "has demonstrated the need for its implementation by a law giving access to registration records and requiring their retention."

This Commission has also met with difficulties in seeking access to registration records. But even if a law were adopted to guarantee such access and even if the Attorney General should bring civil suits for preventive relief in a larger number of districts where there are presently "reasonable grounds to believe" that persons are being deprived of their right to vote, there is little reason to believe that such litigation would afford adequate relief.

The history of voting in the United States shows, and the experience of this Commission has confirmed, that where there is will and opportunity to discriminate against certain potential voters, ways to discriminate will be found. The burden of litigation involved in acting against each new evasion of the Constitution, county by county, and registrar by registrar, would be immense. Nor is there any presently available effective remedy for a situation where the registrars simply resign.

If any State were to pass a law forthrightly declaring colored citizens ineligible to vote, the Supreme Court would strike it down forthwith as in flagrant violation of the Fifteenth Amendment. The trouble, however, comes not from discriminatory laws, but from the discriminatory application and administration of apparently non-discriminatory laws.

Against the prejudice of registrars and jurors, the U.S. Government appears under present law, to be helpless to make good the guarantees of the U.S. Constitution.

CHAPTER VII  
FINDINGS AND RECOMMENDATIONS

THE PROBLEM

“To secure these rights,” declared the great charter of American liberty, “governments are instituted among men, deriving their just powers from the consent of the governed.” The instrument by which consent is given or withheld is the ballot.

Few Americans would deny, at least in theory, the right of all qualified citizens to vote. A significant number, however, differ as to which citizens are qualified. None in good conscience can state that the goal of universal adult suffrage has been achieved. Many Americans, even today, are denied the franchise because of race. This is accomplished through the creation of legal impediments, administrative obstacles, and positive discouragement engendered by fears of economic reprisal and physical harm. With those Americans who of their own volition are too apathetic either to register or, once registered, too apathetic to vote, this report does not concern itself. But with denials of the right to vote because of race, color, religion, or national origin, this Commission and the Congress of the United States are urgently concerned.

The Commission's studies reveal that many Negroes are eager to exercise their political rights as free Americans and that they have made some progress. Our investigations have revealed further that many Negro American citizens find it difficult, and often impossible, to vote. An attempt has been made to gather and assess statistics and facts regarding denial of the right to vote. This task has required careful analysis and understanding of the legal impediments.

The Commission has sought to evaluate the extent to which there is an obligation on the part of the Federal Government to prevent denial of the right to vote because of discrimination by reason of color, race, religion, or national origin. This is what Congress asked. The scope of Federal power to protect the suffrage depends on whether interference comes from State and local officers or from private persons; on whether improper voting procedure alone is involved, or whether the interference is based on race or color, and on the nature of the election itself, whether State or national.

Article I, section 2, of the U.S. Constitution has long stood for the proposition that while the qualifications of electors of Members of Congress are governed by State law, the right to vote for such representatives is derived from the U.S. Constitution. Article I, section

turnout among specific racial groups, particularly on a comparative basis for States or sections, was impossible to obtain except for fragmentary material provided by the Survey Research Center of the University of Michigan, Elmo Roper and Associates, and the Gallup Organization. Official State sources are of only limited help. Some States report total registration figures, in some cases broken down by counties. Other States do not report such figures. To know the extent of nonvoting requires a standard, and the one usually adopted is the potential vote, that is, the total number of citizens of voting age. This is an inexact standard because, in any year, millions of citizens are ineligible to vote because of State residence and other requirements. If it were possible to have reliable registration figures, State by State and county by county, the computation of voting turnout among those qualified to vote would be simple. Millions of citizens are eligible to register but neglect to do so and their number can be more accurately estimated if reliable registration figures are available.

### *Findings*

The Commission finds that there is a general deficiency of information pertinent to the phenomenon of nonvoting. There is a general lack of reliable information on voting according to race, color, or national origin, and there is no single repository of the fragmentary information available. The lack of this kind of information presents real difficulties in any undertaking such as this Commission's.

### *Recommendation No. 1*

Therefore, the Commission recommends that the Bureau of the Census be authorized and directed to undertake, in connection with the census of 1960 or at the earliest possible time thereafter, a nationwide and territorial compilation of registration and voting statistics which shall include a count of individuals by race, color, and national origin who are registered, and a determination of the extent to which such individuals have voted since the prior decennial census.\*

## AVAILABILITY OF VOTING RECORDS

### *Background*

In its effort to discharge its duty to "investigate" formal complaints of denial of the right to vote by reason of race and color, the Commission found it necessary to examine the registration and voting records kept by local officials pursuant to provisions of State law. In both Alabama and Louisiana, the two States which led in the number of voting complaints received by the Commission, the Com-

---

\*The 1960 decennial census forms were "frozen" in December 1958, and are already being printed. The Commission urges the Congress to consider the feasibility of a supplementary census for the collection of these urgently-needed voting statistics.

Specifically, the Commission found that boards of registrars in both Bullock and Macon Counties in Alabama frequently did not function as boards to register Negro applicants on scheduled dates for registration. Furthermore, in these same two counties, on several different occasions, one or more members of such boards—always in sufficient numbers to preclude the existence of the “majority” required for approval of registration—resigned their posts. And further, State officials responsible for appointing members of boards of registrars repeatedly have delayed such appointments when boards became inoperative through resignation.

### *Findings*

The Commission finds that the lack of an affirmative duty to constitute boards of registrars, or failure to discharge or enforce such duty under State law, and the failure of such boards to function on particular occasion or for long periods of time, or to restrict periods of function to such limited periods of time as to make it impossible for most citizens to register, are devices by which the right to vote is denied to citizens of the United States by reason of their race or color. It further finds that such failure to act is arbitrary, capricious, and without legal cause or justification.

### *Recommendation No. 3*

Therefore, the Commission recommends that part IV of the Civil Rights Act of 1957 (42 U.S.C. 1971) shall be amended by insertion of the following paragraph after the first paragraph in section 1971 (b) :

Nor shall any person or group of persons, under color of State law, arbitrarily and without legal justification or cause, act, or being under duty to act, fail to act, in such manner as to deprive or threaten to deprive any individual or group of individuals of the opportunity to register, vote and have that vote counted for any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegate or Commissioner for the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

#### REFUSAL OF WITNESSES TO TESTIFY

### *Background*

In the course of conducting voting hearings in Montgomery, Ala., in December 1958, the Commission was impressed with the fact that its purposes were not fully realized because of the divided authority for compelling the production of registration records. The Commission can subpoena such records but the initiative rests with the Attorney General to petition the court to order a contumacious witness to comply with a Commission subpoena. Such divided responsibility is unusual. These situations require rapid, coordinated action and

of the hearing witnesses and other apparently qualified Negroes, brought by the U.S. Attorney General under the new provisions of the Civil Rights Act of 1957, was dismissed for lack of anyone to sue. Subsequently, new appointees to the Macon County Board were named in July 1959. They refused to serve. Their reason, according to a United Press International report, was "the pressure for Negro registration" and "fear of being 'hounded' by the United States Civil Rights Commission."

The two other suits brought by the Attorney General under the same Act had not at this writing resulted in a single registration. The suit in Georgia had been dismissed and was on appeal; the one in Louisiana was pending.

In short, no one had yet been registered through the civil remedies of the 1957 act.

Class suits on behalf of a number of Negroes to obtain registration have rarely been successful. The courts have inclined to the view that these suits are of an individual nature, with the result that a vast number of suits may be necessary.

The delays inherent in litigation, and the real possibility that in the end litigation will prove fruitless because the registrars have resigned make necessary further remedial action by Congress if many qualified citizens are not to be denied their constitutional right to vote in the 1960 elections.

### *Findings*

The Commission finds that substantial numbers of citizens qualified to vote under State registration and election laws are being denied the right to register, and thus the right to vote, by reason of their race or color. It finds that the existing remedies under the Civil Rights Act of 1957 are insufficient to secure and protect the right to vote of such citizens. It further finds that some direct procedure for temporary Federal registration for Federal elections is required if these citizens are not to be denied their right to register and vote in the forthcoming national elections. Some method must be found by which a Federal officer is empowered to register voters for Federal elections who are qualified under State registration laws but are otherwise unable to register.

Such a temporary Federal registrar should serve only until local officials are prepared to register voters without discrimination. The temporary Federal registrar should be an individual located in the area involved, such as the Postmaster, U.S. Attorney, or Clerk of the Federal District Court. The fact-finding responsibilities to determine whether reasonable grounds exist to believe that the right to vote is being denied could be discharged by the Commission on Civil Rights, if extended. Because of the importance of the matter, such



**PROPOSAL FOR A CONSTITUTIONAL AMENDMENT TO ESTABLISH  
UNIVERSAL SUFFRAGE**

By Chairman Hannah and Commissioners Hesburgh and Johnson

The Commission's recommendation for temporary Federal registration should, if enacted by Congress, secure the right to vote in the forthcoming national elections for many qualified citizens who would otherwise, because of their race or color, be denied this most fundamental of American civil rights. But the proposed measure is clearly a stopgap.

In its investigations, hearings and studies the Commission has seen that complex voter qualification laws, including tests of literacy, education and "interpretation," have been used and may readily be used arbitrarily to deny the right to vote to citizens of the United States.

Most denials of the right to vote are in fact accomplished through the discriminatory application and administration of such State laws. The difficulty of proving discrimination in any particular case is considerable. It appears to be impossible to enforce an impartial administration of the literacy tests now in force in some States, for where there is a will to discriminate, these tests provide the way.

Therefore, as the best ultimate solution of the problem of securing and protecting the right to vote, we propose a constitutional amendment to establish a free and universal franchise throughout the United States.

An important aim of this amendment would be to remove the occasion for further direct Federal intervention in the States' administration and conduct of elections, by prohibiting complex voting requirements and providing clear, simple and easily enforceable standards.

The proposed constitutional amendment would give the right to vote to every citizen who meets his State's age and residence requirements and who is not legally confined at the time of registration or election.

Age and residence are objective and simple standards. With only such readily ascertainable standards to be met, the present civil remedies of the Civil Rights Act should prove more effective in any future cases of discriminatory application. A court injunction could require the immediate registration of any person who meets these clear-cut State qualifications.

The proposed amendment is in harmony with the American tradition and with the trend in the whole democratic world. As noted in the beginning of this section of the Commission's report, the growth of American democracy has been marked by a steady expansion of the franchise; first by the abandonment of property qualifications

## SEPARATE STATEMENT REGARDING PROPOSED XXIII AMENDMENT

By Vice Chairman Storey and Commissioner Carlton

We strongly believe in the right of every qualified citizen of the United States, irrespective of his color, race, religion, or national origin, to register, vote, and have his vote counted. We regard full protection of these rights of suffrage by both State and Federal Governments necessary and proper. Therefore, we have supported and voted for all recommendations of the Commission (except the proposed XXIII Amendment) to strengthen the laws and improve the administration of registration and voting procedures. However, we cannot join our distinguished colleagues in the recommendation of the proposed constitutional amendment. These are our several reasons:

1. We believe that our Commission recommendations, if enacted into law and properly enforced, will eliminate most if not all of the restrictions on registration and voting by reason of race, color, religion, or national origin.

A recommendation proposing a constitutional amendment granting additional power to the Federal Government would be in order only if we had found a lack of power under existing constitutional provisions. Such is not the case.

2. On principle, proposals for constitutional amendments which would alter long-standing Federal-State relationships, such as the constitutional provision that matters pertaining to the qualifications of electors shall be left to the several States, should not be proposed in the absence of clear proof that no other action will correct an existing evil. No such proof is apparent.

3. The Constitution of the United States of America presently includes sufficient authority to the Federal Government to enable it effectively to deal with denials of the right to vote by reason of race, color, religion, and national origin.

4. The information and findings cited in support of the proposed Twenty-third Amendment disclose that some illiteracy still exists, that authoritative State statistics and studies are wholly lacking to support such an important proposal, and that our staff has not had the opportunity to make a thorough study of such a far-reaching proposal.

\* \* \*

I heartily agree with the objections of Commissioners Storey and Carlton to the proposed Constitutional Amendment.

John S. Battle, Commissioner